

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JOSEPH M. PADILLA, as the)
Special Administrator of the)
Estate of Maximilian Padilla,)
Plaintiff) Case No. 09 CV 1222
-v-) Judge Robert M. Dow, Jr.
HUNTER DOUGLAS WINDOW)
COVERINGS, INC.; WINDOW)
COVERING MANUFACTURERS)
ASSOCIATION; AND WINDOW)
COVERING SAFETY COUNCIL,)
AMERICAN BLIND AND WALLPAPER)
FACTORY, INC.)
Defendants.)

July 26, 2011

Oral deposition of JOSEPH B. SALA, Ph.D., taken
at 1700 Two Logan Square, 18th and Arch Streets,
Philadelphia, Pennsylvania, 19103, commencing
at 9:14 a.m. on the above date, before Bonnie Smith,
Registered Professional Reporter and Notary Public.

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1 JOSEPH B. SALA, Ph.D., having been
2 duly sworn, was examined and testified as
3 follows:

4 -----

5 EXAMINATION

6 -----

7 BY MR. JAUREGUI:

8 Q. Let the record reflect this is the
9 discovery deposition of Dr. Joseph B. Sala. And
10 before I go any further, can you --- how do you
11 pronounce your last name?

12 A. Sala.

13 Q. Sala. Taken pursuant to the Rules of
14 Civil Procedure, the Federal Rules of Civil
15 Procedure, the rules for the Northern District of
16 Illinois, taken by agreement of the parties
17 pursuant to court order.

18 Doctor, can you please spell your full
19 name for the record, please?

20 A. Sure. Joseph, J-O-S-E-P-H, Sala, S, as in
21 Sam, A-L-A.

22 Q. What is your date of birth, Dr. Sala?

23 A. 4/1/76.

24 Q. Now, Dr. Sala, before we went on the
25 record you were kind enough to introduce me to the

1 materials that you brought with you today; is that
2 correct?

3 A. Yes.

4 Q. And these materials are largely contained
5 in the two three-ring binders in front of you?

6 A. Correct.

7 Q. Why don't we go as quickly as we can, and
8 I would like to mark your report in this case as
9 Exhibit No. 1. Dr. Sala, what I'd like to do is
10 mark the materials you brought here today. We're
11 going to mark your report as Exhibit No. 1. Is
12 that okay if I attach the stickers here on the
13 documents?

14 A. Yes.

15 Q. Thank you.

16 -----

17 (Report of Dr. Joseph B. Sala dated
18 June 30, 2011, marked Exhibit No. 1.)

19 -----

20 BY MR. JAUREGUI:

21 Q. This is not your report. This is a copy
22 of your CV; correct?

23 A. No. This is a copy of my report, and at
24 the end of the report is my CV.

25 Q. All right. So this is your report,

1 Exhibit No. 1. Okay. And then why don't we mark
2 your CV as Exhibit No. 2.

3 A. Would you like me to separate that?

4 Q. Is it attached here?

5 A. It's at the back of my report. Yeah.

6 Q. Okay. Why don't we -- you can leave it
7 there. We'll just designate that it's marked as
8 Exhibit No. 2.

9 -----

10 (Curriculum Vitae of Joseph B. Sala
11 marked Exhibit No. 2.)

12 -----

13 BY MR. JAUREGUI:

14 Q. Okay.

15 A. And then finally, the last page of this
16 would be the my previous four years list of cases.

17 Q. That would the list of cases?

18 A. Yes.

19 Q. Okay. That would be the list of cases
20 that you worked on as an expert witness; is that
21 correct?

22 A. That I provided testimony at the trial
23 deposition.

24 MR. JAUREGUI: Okay. That would be
25 marked as Exhibit No. 3.

1 (List of trial deposition cases for
2 Joseph B. Sala marked Exhibit No. 3.)

3 -----

4 BY MR. JAUREGUI:

5 Q. All right. So that's that. And then what
6 would be the next binder which you have over here?

7 A. We can start with this binder.

8 Q. Okay. Why don't we do that. Go ahead.
9 Why don't you put it in front of and tell me what
10 it is, the first tab that you have there.

11 A. The first tab are some of the legal
12 documents that I cite in my report.

13 Q. And by legal documents do you -- why don't
14 you tell me what's the first tab you have?

15 A. The Plaintiff's First Amended Complaint At
16 Law.

17 MR. JAUREGUI: Okay. The
18 Plaintiff's Complaint will be Exhibit
19 No. 4.

20 MR. WILLIAMS: Are you going to do
21 them one by one or by categories?

22 BY MR. JAUREGUI:

23 Q. I'll tell you what. Why don't -- tell me
24 what else do you have in the legal documents. So
25 it's the complaint and what else?

1 A. It's the complainant, the Plaintiff's
2 Answers To Defendant Douglas Window Covering First
3 Set of Interrogatories.

4 Q. What other legal documents do you have
5 there?

6 A. The depositions in the case. Deposition
7 of Jose Padilla.

8 Q. Hold on a second.

9 A. I'm sorry.

10 Q. Deposition of Jose Padilla?

11 A. Deposition of Ruth Padilla, Deposition of
12 Brenda Davis, Deposition of Mindy Roberts,
13 Deposition of Stuart Statler, Deposition of Robert
14 Wright, Deposition of Richard Anderson, deposition
15 of Don Frazier, deposition of Roberta Frias,
16 deposition of Joseph Jankoski, deposition of
17 Ronald Rubinnoff, deposition of Eugene Thompson,
18 deposition of Michelle Jordan. That would be the
19 legal documents.

20 Q. That would be what you called earlier as
21 the set of legal documents?

22 A. Yes.

23 MR. JAUREGUI: Why don't we call it
24 as a group as Exhibit No. 4.

25 -----

1 (Legal documents including
2 depositions marked Exhibit No. 4.)

3 -----

4 BY MR. JAUREGUI:

5 Q. All right. What is the next set of
6 documents that you have --

7 A. The police report.

8 Q. -- after the legal documents?

9 A. Police report.

10 MR. JAUREGUI: Okay. Mark that as
11 Exhibit No. 5, please.

12 -----

13 (Police Reports marked Exhibit
14 No. 5.)

15 -----

16 BY MR JAUREGUI:

17 Q. What's the next document?

18 A. Photographs.

19 Q. Can you describe what photographs are
20 contained there?

21 A. Sure. They'd be photographs of the
22 incident blinds we had taken at the scene, and
23 then also what appear to be recreations from or
24 reconstruction efforts where the blinds were put
25 back on the windows.

1 Q. Are there any other photographs there?

2 A. I don't believe so.

3 Q. We're going to mark that as group Exhibit
4 No. 6.

5 -----
6 (Twenty-four photographs of room
7 and incident blind marked collectively
8 Exhibit No. 6.)

9 -----

10 BY MR JAUREGUI:

11 Q. What is the next set of documents?

12 A. The report of Stuart Statler.

13 MR. JAUREGUI: Okay. We're going
14 to label that as Exhibit No. 7.

15 -----
16 (Report of Stuart Statler dated
17 March 22, 2011, marked Exhibit No. 7.)

18 -----

19 BY MR JAUREGUI:

20 Q. All right. And the next document that you
21 have there?

22 A. The report of Robert Wright.

23 MR. JAUREGUI: That will be Exhibit
24 No. 8.

25 -----

1 (Report of Robert Wright dated
2 March 18, 2011, marked Exhibit No. 8.)

3 -----

4 BY MR. JAUREGUI:

5 Q. What do we have next?

6 A. Examples of vertical blinds.

7 Q. What is the source of that information?

8 A. These are taken from the internet
9 depictions of vertical blinds and sales forms for
10 vertical blinds.

11 Q. When was the information downloaded from
12 the internet?

13 A. This was downloaded sometime -- I don't
14 have the specific dates -- sometime between the
15 production of the report and this deposition.

16 Q. So it would have been downloaded within
17 the last month?

18 A. Likely within the last month or so.

19 Q. Is that information of examples of
20 vertical blinds from a particular vendor?

21 A. No. It's a variety of vendors and
22 manufacturers.

23 Q. Any of those blinds manufactured by Hunter
24 Douglas.

25 A. There may be in there. I'm not sure of

1 all the sales they are. They list the specific
2 manufacturer.

3 -----

4 (Examples of vertical blinds marked
5 Exhibit No. 9.)

6 -----

7 BY MR. JAUREGUI:

8 Q. Did you rely on any of the documents
9 marked Exhibit No. 9 for your report?

10 A. Well, I referenced in my report the
11 depiction of blinds and sales and characterization
12 of blinds, and these are examples of that.

13 Q. Is there anything specific or particular
14 about the sales or the depictions of those blinds
15 that is relevant to this case?

16 A. Not these in particular. It's the general
17 information and how I speak about it in my report.

18 Q. You're not suggesting that the way --
19 strike that. Did you tell me that there is an
20 order form in there?

21 A. There are some ordering forms, for
22 example, there is a print-out from Lowes where one
23 could order vertical blinds.

24 Q. All right. You're not suggesting the
25 ordering procedures available in July of 2011 were

1 the same ordering alternatives or options that
2 were available back in 1995, are you?

3 A. No, I am not.

4 Q. All right. The next set of documents,
5 doctor. We're up to Exhibit 9. So does that --
6 these the entire contents of your first binder,
7 then?

8 A. Yes.

9 Q. Okay. We'll move on to the second binder
10 now. What's the first set of records in the
11 second binder?

12 A. The first set of records is a memorandum
13 with the subject, Special Report, Accidental
14 Strangulation Of Children Less Than Five Years Of
15 Age.

16 Q. What is the source of that document?

17 A. This would be a -- I believe it's a U.S.
18 Consumer Product Safety Commission document.

19 Q. Is there a date for that report?

20 A. May 7th, 1981.

21 Q. To facilitate the labeling on these
22 documents, we'll just refer to that as the May 7,
23 1981, report from the Consumer Product Safety
24 Commission. Is that adequate for you? What did
25 you label it?

1 A. We labeled it -- I labeled it Rutherford &
2 Kelly, 1981. I can refer to the rest of the
3 documents in that way, if you'd like.

4 Q. And Rutherford & Kelly, what is that?

5 A. Those are the authors of this memorandum.

6 Q. But is the memorandum from the Consumer
7 Product Safety Commission?

8 A. I believe that they were employed by...

9 MR. JAUREGUI: All right. We're
10 going to the label the Rutherford & Kelly
11 '81 report as Exhibit No. 10.

12 -----

13 (Rutherford & Kelly 1981 report
14 marked Exhibit No. 10.)

15 -----

16 BY MR. JAUREGUI:

17 Q. What relevance, if any, does Exhibit
18 No. 10 have to your report in this case?

19 A. It's referenced in my report on the
20 background as to development and understanding of
21 window cord strangulations and more generally
22 ligatures.

23 Q. Is it your understanding that as of 1981
24 there were already reports of strangulations of
25 young children from window blind cords?

1 A. This report details an investigation the
2 investigators or the researchers performed on
3 ligature strangulations in general, and it calls
4 out a number of products that are related to such
5 strangulations.

6 Q. Do you know if the investigators reached
7 any conclusions in that study?

8 A. Yes, they did.

9 Q. What were those conclusions, generally?

10 A. Generally, that there are a variety of
11 consumer products that are related, that there
12 were some that seemed could not be dealt with
13 without affecting the functionality of the product
14 through design, and there were calls for increased
15 consumer education.

16 Q. Were window blinds one of the products
17 that they said they could not address with any
18 alterations of the signs of the time?

19 A. I believe that that was the gist, that
20 drapery cords and blind cords fell into that
21 category.

22 Q. Did you agree with that conclusion?

23 A. It seemed very well supported by their
24 evidence.

25 Q. Did you agree the completion of that

1 report was also applicable in 1995 at the time
2 when the window blind at issue was manufactured?

3 A. I think that what I detailed in my report
4 is evolving knowledge about it and the efforts
5 that went towards it. And so I believe that over
6 time with the industry they developed additional
7 means to try and address this issue.

8 Q. So do I take it that by 1995 you have the
9 understanding that there were other alternative
10 means, alternative designs to address the issue of
11 window covering strangulation?

12 A. Can you define other alternative designs?

13 Q. Such as window coverings with wands or the
14 use of tension devices which may have not been
15 available in 1981?

16 A. By 1995 products such as that were
17 definitely on the market.

18 Q. So by 1995 there were other alternative
19 designs that may not have been available in 1981?

20 A. I -- I don't know the full extent of the
21 product offerings in 1981. It very well that some
22 of those products may have existed and their
23 reference to design changes may incorporate those
24 into their overall conclusion. They're not
25 specific as to what designs were available in

1 1981.

2 Q. So what is the specific purpose of you
3 using that document in your report in this case?

4 A. To detail the history of this issue
5 that we're here to speak about today and the
6 evolution of the safety knowledge about the issue
7 at hand.

8 Q. Anything other than used to bring back the
9 relevant historical background?

10 A. I think that's probably the sum of its
11 purpose there.

12 Q. What's the next document that you have
13 there?

14 A. The document is Hapulka 1981.

15 Q. Can you spell that, please?

16 A. H-A-P, as in Peter, U-L-K-A.

17 Q. Okay. And what is that, doctor?

18 A. That is, again, another memorandum from
19 the U.S. Consumer Product Safety Commission.

20 MR. JAUREGUI: All right. We're
21 going to label the Hapulka memorandum as
22 Exhibit No. 11.

23 -----

24 (Halpuka 1981 memorandum marked
25 Exhibit No. 11.)

1 BY MR. JAUREGUI:

2 Q. I'm putting you to work, doctor. What's
3 the date of that memorandum?

4 A. June 2nd, 1981.

5 Q. And what is the gist of that memorandum?

6 A. It's largely similar. It's -- it's
7 similar to the Rutherford & Kelly, again,
8 detailing the investigations into ligature
9 strangulations, children's products, and generally
10 consumer products at large.

11 MR. WILLIAMS: Can we go off the
12 record?

13 -----

14 (Off the record at 9:32 a.m.)

15 -----

16 (On the record at 9:46 a.m.)

17 -----

18 MR. JAUREGUI: We're going to get
19 back on the record. I'm going to ask you
20 please identify yourself for the record
21 and state who you represent. Can you
22 please go ahead and introduce yourself?

23 MR. WEISS: Yes, sir. Mike Weiss,
24 from Carroll Weiss in Atlanta calling in
25 representing Window Covering Manufacturers

1 Association and Window Covering Safety
2 Council.

3 MR. JAUREGUI: Thanks.

4 BY MR. JAUREGUI:

5 Q. All right. Now, we'll pick up where we
6 left off, Dr. Sala. We left off at Exhibit
7 No. 11. Of what significance, if any, is
8 Exhibit 11 to the report you have prepared in this
9 case?

10 A. Similar to the Exhibit 10, this is detail
11 on the scientific understanding of these sorts of
12 ligature strangulations.

13 Q. And this -- strike that. This scientific
14 understanding is as of 1981?

15 A. At the time. Yes.

16 Q. What's the next document that you have
17 there, doctor?

18 A. The next document would be Rogers 1982.

19 Q. And what is that document, if you can
20 describe it?

21 A. Another memorandum from the U.S. Consumer
22 Product Safety Commission.

23 MR. JAUREGUI: We are going to mark
24 the Rogers 1982 memorandum as an exhibit.

25 Doctor, if you would do the honors

1	there.
---	--------

2 | -----

3 (Rogers 1982 memorandum marked
4 Exhibit No. 12.)

5 | _____

6 BY MR. JAUREGUI:

7 Q. If you can tell us, what is the gist of
8 Rogers 1982 memorandum?

9 A. It is similar to the other two documents.
10 These three have very similar findings and
11 research aims.

12 Q. And did you rely on this document in
13 preparing your report in this case?

14 A. Yes, as cited in my report and as
15 referenced in my previous answers.

16 Q. Next document that you have in front of
17 you?

18 A. The next set of documents are CPSC,
19 Consumer Product Safety Commission releases.

20 Q. Can you tell me what the date of those
21 releases are?

22 A. One is from December 20th, 1985, one is
23 October 4th, 1994, one is, I believe 1997.

24	Q.	Is there a month?
----	----	-------------------

25 | A. I'm sorry. I'm looking right now. I'm

1 sorry. This is 1996.

2 Q. Is there a month?

3 A. I do not have a month on this one.

4 Q. Okay.

5 A. The next is June 3rd, 1997, and then
6 November 1st, 2000.

7 MR. JAUREGUI: We're going to mark
8 Exhibit No. -- strike that. We're going
9 to mark as group Exhibit CPSC releases
10 that you just identified for me, I counted
11 five, one for '85, '84, '86, '87 and
12 2000, as group Exhibit No. 13.

13 THE WITNESS: Excuse me. I believe
14 you said '84. It was '94. You said '84.

15 MR. JAUREGUI: 1994. I stand
16 corrected. That would be October 4th,
17 1994?

18 THE WITNESS: Yes.

19 MR. JAUREGUI: All right.

20 -----

21 (Five Consumer Product Safety
22 Commission releases marked collectively
23 Exhibit No. 13.)

24 BY MR. JAUREGUI:

25 Q. And what relevance, if any, do any of the

1 Consumer Product Safety Commission releases have
2 relative to the report that you have prepared in
3 this case?

4 A. Again, they're cited in my report, and so
5 I relied on them in the manner in which I detailed
6 in my report, and they provided information,
7 again, about the knowledge about window cord
8 safety, window cord strangulations, and the work
9 done to understand this.

10 Q. Do you consider the information and data
11 from the Consumer Product Safety Commission such
12 as the one contained in Exhibit No. 13 reliable?

13 A. I -- I believe that -- that the
14 information and the data is -- is there and it
15 reflects what has been done. I have no reason to
16 doubt the reliability of their analyses, and it
17 comports with my understanding of the hazards as
18 well.

19 Q. Is there a specific reason why you
20 selected those releases versus thousands of other
21 releases that the Commission has issued over the
22 years?

23 A. These are directly related to window cord
24 strangulation.

25 Q. And that's the reason why you selected

1 them?

2 A. That's the -- that's the issue that I was
3 dealing with here, and they are relied on for the
4 purposes of my report, and that's why I selected
5 them.

6 Q. All right. What's the next set of
7 documents you have there, doctor?

8 A. The next document is an article by
9 Rauschschwalbe & Mann, 1997.

10 MR. JAUREGUI: We're going to mark
11 the Rauschschwalbe article '97 as Exhibit
12 No. 14.

13 -----

14 (Rauschschwalbe & Mann 1997 article
15 marked Exhibit No. 14 for identification.)

16 -----

17 BY MR. JAUREGUI:

18 Q. Can you tell me what is the gist of that
19 article, doctor, Exhibit 14?

20 A. Again, this is an article that details the
21 understanding of window cords, potential hazards
22 associated with window cords and strangulation.

23 Q. And what was the understanding in 1997 as
24 of the date of that publication?

25 A. That there are a number of reports related

1 to window cord strangulations and there are
2 patterns that can be identified from this data.

3 Q. Does the article identify any such
4 patterns?

5 A. It does.

6 Q. What are the patterns?

7 A. The patterns that they identified are
8 infants and kids near windows may become entangled
9 with drapery pull cords while sleeping or playing.
10 Two, toddlers may be suspended from pull cords
11 after jumping or falling from furniture placed
12 near a window.

13 Q. Did you find the patterns of how
14 strangulations occurred relevant to this
15 case?

16 A. Well, they're relevant to the issue at
17 hand and what is known about how the events
18 occurred.

19 Q. Are there any similarities between the
20 patterns identified in the Rauschschwalbe '97
21 article to the manner in how the incident at issue
22 occurred?

23 MR. WILLIAMS: Objection. Vague.
24 Go ahead.

25 THE WITNESS: Well, the ultimate

1 issue that we're here and what happened
2 with the Padilla child being found within
3 one of the cords is similar to those
4 incidents.

5 BY MR. JAUREGUI:

6 Q. All right. What's the next set of
7 documents you have, doctor?

8 A. The next set of documents is the 1996
9 version of the American National Standard For
10 Safety Of Corded Window Covering Products.

11 MR. JAUREGUI: We're going to mark
12 the 1986 American National Standard for?

13 THE WITNESS: Safety Of Corded
14 Window Covering Products.

15 MR. JAUREGUI: As Exhibit 15.
16 Thank you.

17 MR. WILLIAMS: You said 1986. It's
18 1996.

19 THE WITNESS: 1996.

20 MR. JAREGUI: 1996.

21 THE WITNESS: 1996. I'm sorry.

22 MR. WILLIAMS: You didn't, he did.

23 MR. JAUREGUI: 1996.

24 THE WITNESS: 1996.

25 MR. JAUREGUI: It is 1996.

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— — — — —

(1996 version of the American National Standard for safety of corded window covering products marked Exhibit No. 15.)

BY MR. JAUREGUI:

Q. Of what significance, if any, is the 1996 standard to the report that you have prepared in this report?

A. It's cited in my report as part of the history of the -- how the industry has addressed this issue. It shows the standards that they work with, the CPSC, to come up with a time frame, which they did so.

Q. And anything else other than the illustration of historically how the industry has responded?

A. Well, also the ways in which technically they did so.

Q. What was the 1996 standard intended to address?

A. The 1996 standard -- I'd rather just refer back to the standard.

Q. That's fine.

1 A. I can read to you the scope and the
2 objective of the standard.

3 Q. Well, do you have an understanding, is
4 there a way -- I know that you use it in your
5 report, you cited to it. Do you have an
6 understanding as to what the '96 standard intended
7 to do?

8 A. Yes. But it also listed clearly what they
9 intended to do.

10 Q. Whichever way is more comfortable in
11 answering that question, go ahead.

12 A. All right. So the objective of the
13 standard, listed as the objective of the standard
14 is to provide requirements for covered products
15 that reduce the possibility of injury including
16 strangulation to young children from the bead
17 chain or for any type of flexible loop device used
18 to operate the product.

19 Q. Was there any specific product the '96
20 standard was intended to address?

21 A. Window coverings. A variety of products.

22 Q. Do you know whether horizontal blinds was
23 the primary product that the '96 standard was
24 intended to address?

25 A. Well, that was covered in the standard.

1 The horizontal blinds were covered in the
2 standard.

3 Q. So were there other window coverings other
4 than horizontal blinds that the '96 standard was
5 intended to address, as you understand it?

6 A. As I understand it, this is a standard
7 that is meant, as it's stated, to address some of
8 the possible injuries to young children related to
9 window coverings, and they have a variety of
10 requirements and performance sort of standards
11 that they set that window coverings would meet.

12 Q. Do you know if vertical blinds were within
13 the group of products that was attended to be
14 addressed by the '96 standard?

15 A. I believe that the standard does have a
16 reference to vertical blinds.

17 Q. Can you look that up and see if it does?

18 A. Yes. Products covered include cellular
19 shades, horizontal blinds, pleated shades, roll-up
20 blinds, roller shades, Roman shades, traverse
21 rods, and vertical blinds.

22 Q. And what was specifically -- do you know
23 what the standards or how the standard
24 specifically intended to address the hazard of
25 strangulation for young children from vertical

1 blinds?

2 A. Well, the standard sets forth -- my
3 understanding of the standards set forth
4 requirements. It doesn't outline how
5 manufacturers should design a product, but rather
6 it sets out some performance standards that the
7 products need to meet based on whatever -- what
8 features or what characteristics a product might
9 have.

10 Q. What performance standards do you
11 understand the '96 standard set for addressing the
12 strangulation hazard from vertical blinds?

13 MR. WILLIAMS: Objection. I think
14 it's vague because it encompasses a whole
15 lot of things. You don't want him reading
16 from the report and I don't want him to
17 paraphrase and inadvertently miss
18 something.

19 Go ahead if you're comfortable with
20 the question.

21 THE WITNESS: Phrased as broadly as
22 that, I -- again, my understanding is that
23 based on specific characteristics for a
24 given product, you want to apply the
25 standard to make sure that one's product

1 meets the standard. But without speaking
2 of a specific design or product I don't
3 want to have to guess as to something that
4 would encompass all vertical blinds.

5 BY MR. JAUREGUI:

6 Q. All right. I understand that. Now, the
7 blind at issue here is a vertical blind; is that
8 correct?

9 A. Yes. That's my understanding.

10 Q. And one of the opinions or the opinions
11 that you're offering in this case you are opining
12 that Hunter Douglas responded appropriately back
13 in 1995 at the time when this window blind was
14 manufactured in addressing the strangulation
15 hazard from vertical blinds; is that correct?

16 A. You know, I'm probably more comfortable
17 with the opinions as I expressed them in my
18 report. I don't know if I can completely endorse
19 your paraphrase of my -- my report.

20 Q. All right. We'll get to your opinions in
21 a second, doctor. All right. What's the next set
22 of documents you have in front of you, doctor?

23 A. I have -- this is another short article
24 written by Rauschschwalbe, same spelling as the
25 last, written in 1997.

1 Q. What's the subject of that article?

2 A. Window Covering Pull Cords.

3 Q. All right. Does the article address the
4 pull cord from a specific product?

5 A. No. Generally, the window coverings in
6 general.

7 Q. And what does the -- strike that. Are
8 there any conclusions reached in that article.

9 A. There are conclusions and there is
10 information as to what can be done to -- by
11 consumers to remove this hazard.

12 Q. And did you rely on this article for your
13 opinions?

14 A. Again, I referenced it in the report.

15 Q. And when you say you referenced it, does
16 that mean you relied on it or not?

17 A. I utilized the information that was in it
18 to support my opinions.

19 Q. And Miss Rauschschwalbe, is she an
20 employee of the Consumer Product Safety
21 Commission?

22 A. That's my understanding.

23 Q. Do you know what her position was at the
24 time with the Commission?

25 A. No. I know she was -- at the time of this

1 she's listed as being part of the Office Of
2 Compliance, but I don't know her position.

3 MR. JAUREGUI: Let's go ahead and
4 mark that as Exhibit No. 16, the
5 Rauschschwalbe '97 article.

6 -----
7 (Rauschschwalbe 1997 article marked
8 Exhibit No. 16.)

9 -----

10 BY MR. JAUREGUI:

11 Q. What's the next document you have in your
12 report -- I mean, in your materials, rather?

13 A. The next article is a research paper by
14 Belch & Willis.

15 MR. JAUREGUI: We're going to mark
16 the research paper by Belch & Willis as
17 Exhibit No. 17.

18 -----
19 (2001 Research paper by Belch &
20 Willis marked Exhibit No. 17.)

21 -----

22 BY MR. JAUREGUI:

23 Q. When was that study published?

24 A. 2001.

25 Q. What was the subject of the study?

1 A. Generally, purchasing decisions and how
2 consumers make purchasing decisions.

3 Q. Does the article speak of any particular
4 products or just generally purchasing decisions?

5 A. Much of the research I referenced in this
6 is very general to purchasing decisions and what
7 sorts of information that consumers consider and
8 rely on.

9 Q. Any of the purchasing decisions or any --
10 strike that. Any of the purchasing literature
11 that you reviewed and relied upon for your report,
12 does that relate in any way directly to the issue
13 of purchasing the window coverings?

14 A. It was not meant to reference to this
15 specific incident.

16 Q. What is the relevance of the Belch &
17 Willis article to the opinions you're offering in
18 this case?

19 A. Just to have a scientific understanding of
20 how and what sorts of information people may
21 consider when deciding to buy a given product.

22 Q. To your understanding have there ever been
23 any studies that have been done of people that
24 purchase window coverings and what goes into their
25 decision-making in terms of choosing the options

1 of their market?

2 A. I'm not -- I'm not aware and I don't have
3 in my possession any scientific articles of that
4 sort.

5 Q. Do you consider the work reliable from
6 Belch & Willis?

7 A. Certainly I have incorporated some of the
8 information here to my opinions.

9 Q. Have you used their information in other
10 cases where you have been retained as an expert?

11 A. For a similar purpose, yes.

12 Q. Do any of the authors have any association
13 with Exponent Failure Analysis?

14 A. Not to my knowledge.

15 MR. JAUREGUI: I need more exhibit
16 stickers.

17 BY MR. JAUREGUI:

18 Q. All right. We're moving along doctor.
19 What is the next set of records that you have in
20 your materials?

21 A. Article by Hoyer.

22 MR. JAUREGUI: We're going to mark
23 the Hoyer article as Exhibit No. 18.

24 -----

25 (1984 Hoyer article marked Exhibit

1 No. 18.)

2 BY MR. JAUREGUI:

3 Q. What is the subject matter of that
4 article?

5 A. Same vein as Exhibit No. 17.

6 Q. Which is dealing with --

7 A. Consumer -- consumer purchasing decisions.

8 Q. And is it your understanding that in
9 1984 the thinking of consumers in choosing what
10 type of products to purchase was the same as in
11 1995?

12 A. I believe for the purpose of that I've
13 relied on or I've utilized this in my report that
14 the general findings and data that are in this
15 paper as well as the other consumer purchasing
16 holds.

17 Q. Just can you cite some examples? I want
18 to make sure that I understand. What type of
19 consumer purchasing decisions are you talking
20 about here?

21 A. Sure. What I use these articles for in my
22 report is to support the statement that one's
23 decision as to which product to purchase for an
24 intended use is often based on a number of factors
25 and can include, among other things, aesthetics,

1 quality, brand, price, functionality and safety.

2 So these documents were support for those being
3 contributing factors to a purchaser's decision to
4 purchase a product.

5 Q. Do you know if any of the items that were
6 addressed in the Hoyer '84 article or the research
7 paper by Belch & Willis dealt with any products
8 which were considered to be unreasonably dangerous
9 to children?

10 A. I don't believe that they were -- that
11 that would be how the products they considered
12 would be characterized.

13 Q. So they did not deal with articles or
14 products that would be considered unreasonably
15 dangerous to children?

16 A. I don't believe so.

17 Q. What's the next set of documents that you
18 have?

19 A. Article by Sproles & Kendrall, 1986.

20 MR. JAUREGUI: We're going to mark
21 the Sproles & Kendrall '86 article as
22 Exhibit No. 19.

23 -----

24 (1986 Sproles & Kendrall article
25 marked Exhibit No. 19.)

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BY MR. JAUREGUI:

Q. What's the subject matter of that article?

A. The same as the previous two documents.

And, again, toward the same purpose as the other two and the sentence that I've read from the report.

Q. Do you consider the '86 article, again, to be relevant and contemporaneous to the decisions that a consumer would have made in 1995 when purchasing a vertical blind?

MR. WILLIAMS: Objection. Vague, compound. Relevant. Contemporaneous.

Go ahead.

THE WITNESS: I believe that the article supports the statement as I made in the report and how it relates to my statements about this in the report.

BY MR. JAUREGUI:

Q. Do you know that article dealt with any products that were either regulated by the Consumer Product Safety Commission or were otherwise considered to be unreasonably dangerous to children?

A. I don't believe that that would have been

1 the case.

2 Q. What's the next set of documents you have
3 in your report?

4 A. Tse, that is T-S-E, 1998.

5 Q. And what is that? Is that an article or a
6 publication?

7 A. The same. Publication article. And,
8 again, it is dealing with the topics that I've
9 covered for the previous three and is included in
10 my report along with the statement that I read
11 into the record.

12 MR. JAUREGUI: We are going to mark
13 the Tse article '98 as Exhibit 20.

14 -----

15 (1998 Tse article marked Exhibit
16 No. 20 for identification.)

17 -----

18 BY MR. JAUREGUI:

19 Q. Same question as I asked for the other
20 publications. Do you know whether or not the '88
21 publication dealt with the consumer choices
22 related to the purchase of window blinds?

23 A. Can you repeat that question for me.

24 Q. Yes. The previous publication that we
25 reviewed you told me that this publication looked

1 at the type of thinking that consumers --

2 A. Yes.

3 Q. -- engaged in when choosing a product. My
4 question related to this article, for the '98
5 article. Do you know whether that article dealt
6 with any window covering products?

7 A. I don't believe it was specific to window
8 coverings.

9 Q. Do you know whether or not that article
10 dealt with products that were considered to be
11 unreasonably dangerous against children?

12 A. I don't believe that to be the case.

13 Q. And did you rely on that article for -- to
14 support the opinion that you have in your report
15 stating consumer choices when it comes to safety,
16 aesthetics, price and other issues?

17 A. That these are -- that these are -- that
18 consumers based their decision to purchase a
19 product for an intended use based on factors
20 including those. Yes.

21 Q. Are any of those studies that we reviewed,
22 the last four studies or articles, are they based
23 on any type of empirical data?

24 A. Yes. Some of them are.

25 Q. Some of them are? Which ones?

1 A. I believe that the Belch article collected
2 data and analyzed data. As to the Hoyer as well
3 as the Sproles and I believe that the Tse was a
4 review article of other articles.

5 Q. Do you know if any -- if the premise of
6 this publication has being discredited in any way,
7 shape or form?

8 A. I do not.

9 Q. What's the next set of records you have in
10 your materials?

11 A. Ziamou & Ratneshwar, 2003.

12 MR. JAUREGUI: We're going to mark
13 as Ziamou & Ratneshwar, all three articles
14 as Exhibit No. 21.

15 -----

16 (Three articles by Ziamou &
17 Ratneshwar, 2003, marked collectively
18 Exhibit No. 21.)

19 -----

20 BY MR. JAUREGUI:

21 Q. What is the subject matter of that
22 article?

23 A. Same as the last and the last of the
24 articles I cited with reference to consumer
25 purchasing issues.

1 Q. Do any of the -- strike that. Do any of
2 the others have any affiliation with Exponent?

3 A. Not to my knowledge.

4 Q. Do you know whether or not the work is
5 considered authoritative in the field of consumer
6 purchasing decisions?

7 A. Well, it's a peer review published
8 article. So I think that the scientific community
9 would consider that is of a value to be considered
10 as data.

11 Q. Have you ever offered these type of
12 opinions on consumer purchasing decisions in other
13 cases that you've testified at trial?

14 A. I've talked about that in these -- in
15 cases, yes.

16 Q. And have those opinions been admitted by
17 the court or have been limited in any way or form?

18 A. Can you break that into two separate
19 questions?

20 Q. Yeah. Have these -- have your decisions
21 on consumer purchasing decisions been introduced
22 in a court of law as evidence of consumer
23 purchasing decisions?

24 A. I don't believe so.

25 Q. Have they been excluded by a court?

1 A. No, they haven't.

2 Q. Have you ever attempted to introduce these
3 opinions in a court of law?

4 A. As expressed in a report --

5 Q. Yes.

6 A. -- yes. At deposition or trial they have
7 not come up.

8 Q. But they have not been accepted or
9 admitted into evidence by a court of law; is that
10 correct?

11 A. Not to my knowledge. I don't know where
12 all the cases --

13 Q. Do you know what kinds of cases or the
14 names of the cases where you have attempted to
15 offer opinions on consumer purchasing decisions in
16 the past?

17 MR. WILLIAMS: Well, objection.

18 Vague. You say attempted to offer
19 opinions. He just told you he's included
20 opinions of this nature in reports before.
21 As I understand it, in none of those cases
22 has the case progressed far enough to
23 either deposition or trial. So I think
24 the characterization attempting to offer
25 something suggests that it was rejected or

1 excluded. So I don't know that's fair.

2 So the question I believe is vague as
3 phrased.

4 BY MR. JAUREGUI:

5 Q. Let's clear that up, doctor. Have you
6 offered any opinions at trial dealing with
7 consumer purchasing decisions?

8 A. Related to purchasing decisions?

9 Q. Yes.

10 A. Not directly.

11 Q. Not directly --

12 A. Related to purchasing decisions. Yes.

13 Q. I'm sorry. I didn't get your answer.

14 A. I have offered opinions that would be
15 related to purchasing decisions.

16 Q. Okay. In what cases? You're looking at
17 Exhibit 3?

18 A. I'm looking at Exhibit 3.

19 Q. That's your list of cases?

20 A. My list of cases.

21 Q. All right.

22 A. The first trial case there, Izikoff versus
23 Nissan North America.

24 Q. All right. That's January 2010?

25 A. Yes. That dealt -- that case dealt with a

1 consumer's purchase and use of a vehicle and an
2 injury that allegedly happened during his
3 interaction with that product, and I held opinions
4 as to whether or not additional information or
5 safety information provided about functionality
6 would have either averted or altered the
7 gentleman's behavior, which I believe also
8 encompassed the purchase of that vehicle.

9 Q. Did you testify at trial?

10 A. I did.

11 Q. Do you know whether your testimony and the
12 consumer choice of purchasing the vehicle was
13 admitted into evidence?

14 A. Again, you're referencing it as a separate
15 opinion as to the purchase. I think that the
16 opinion about his purchase of that vehicle was
17 part of the -- my full opinion and none of my
18 opinions in that case were excluded.

19 Q. What was the outcome of that case?

20 A. I believe going off my memory that there
21 was a defense verdict in that case.

22 Q. Can you narrow down the issues for me?
23 What was the issue there with respect to the
24 choice of the consumer in choosing -- was it a
25 consumer's choice in choosing that particular

1 vehicle?

2 A. To get more specific, I'd really need to
3 review the issues as hand. It's been a while
4 since I've reviewed this case. My memory was that
5 this issue was relevant to this case, but to
6 address it anymore specifically, I'd really have
7 to review some materials and I don't have them and
8 I'm not prepared to do so.

9 Q. I understand that, and I don't mean to
10 push because it's not a memory test in this issue.
11 But I just want an understanding as to whether or
12 not the issue in that case was the vehicle that
13 the consumer chose to purchase versus some
14 particular type of tires or a specific feature of
15 the vehicle.

16 A. I believe that in this sense it would be
17 an issue of a feature as it related to the
18 purchase of the vehicle.

19 Q. All right.

20 A. And, again, this is -- I'm trying to
21 remember how exactly this -- this case was back a
22 number of years.

23 Q. That's fair. And the type of analysis
24 that you did in that case do you feel is similar
25 to the type of analysis that you've done in this

1 case?

2 A. I believe that there are similarities
3 between these -- these issues, or some of the
4 issues that I've dealt with in these two cases.

5 Q. All right. Did any of the issues in that
6 component, if there was a component of the
7 vehicle, did that involve a strangulation hazard?

8 A. No.

9 Q. Is there any comparison in terms of the
10 product that you're dealing with, a motor vehicle,
11 versus a vertical blind with loop cords that is
12 found in the bedroom of a young boy?

13 A. I don't think the two products would be
14 similar in that respect.

15 Q. Dr. Sala, to your understanding do you
16 know -- strike that. As of today do you know how
17 many children have died as a result of window
18 covering strangulations?

19 MR. WILLIAMS: Objection. Vague.
20 Go ahead.

21 THE WITNESS: I don't have a number
22 off the top of my head.

23 BY MR. JAUREGUI:

24 Q. Do you know if it's more like 300?

25 A. I do not know.

1 Q. You reviewed the Jama article of 1997, did
2 you not, in referencing your opinions?

3 A. Yes.

4 Q. Okay. And in that article it indicates as
5 of 1995 there were close to -- strike that --
6 there were over 300 deaths already?

7 MR. WILLIAMS: Do you want him to
8 review the article?

9 BY MR. JAUREGUI:

10 Q. You can go ahead.

11 A. The article reports a summation of
12 unreported and of about 176, and reported, N
13 equals 183 cases, indicates that 359 window cord
14 strangulations may have occurred during the time
15 period of interest.

16 Q. And what was the time period?

17 A. Their time period is listed as 1981
18 through 1995.

19 Q. All right. So let's just say we're
20 dealing with 359 deaths, just for the sake of this
21 question. Do you know whether anyone has ever
22 gone back and attempted to interview the parents
23 of the victims to try to determine what went into
24 their thinking in terms of making the decisions in
25 purchasing the type of window covers that they

1 chose?

2 A. I know of no -- I don't know of any
3 attempt to do so.

4 Q. Wouldn't that be a more relevant
5 comparison in this case if you're going to use
6 consumer choices and what rights consumer choices
7 to go back after or have a sample of 359 deaths to
8 see what went into the thinking of those people?
9 Wouldn't that be a more relevant comparison than
10 to compare consumer choices that have nothing to
11 do with window coverings?

12 A. I think you're -- you're -- you're
13 misunderstanding how I am attempting to use this
14 information. I'm not specifically stating that
15 these articles tell us how consumers choose window
16 coverings, rather than I was using these articles
17 as a way to help understand that choices, consumer
18 choices, to make -- choices that consumers make in
19 purchasing a variety of products will incorporate
20 things such as the factors that I referenced in
21 here.

22 I'm not disputing that a study
23 specifically designed to address how and what
24 people consider in purchasing window blinds
25 specifically couldn't give us more information,

1 but this was general information and knowledge
2 about what sorts of information people consider in
3 general when purchasing consumer products.

4 Q. All right. So you're not disputing that a
5 study limited to what went into the thinking when
6 a parent or a consumer orders a particular window
7 covering would be more relevant when determining
8 what goes into the thinking of parents or
9 consumers when they choose window coverings?

10 A. Without knowing the outcome of that study
11 I can't answer more relevant, but I think that
12 would provide additional information. But I know
13 of no such study.

14 MR. JAUREGUI: Just go off the
15 record.

16 -----

17 (Off the record at 10:32 a.m.)

18 -----

19 (On the record at 10:32 a.m.)

20 -----

21 BY MR. JAUREGUI:

22 Q. What's the next document that you have in
23 your materials?

24 A. Did we stop at Exhibit No. 21?

25 Q. Yes. We're up to Exhibit 22, whatever

1 that's next.

2 A. The next article is Peebles & Norris,
3 1998.

4 MR. JAUREGUI: We're going to go
5 ahead and mark the Peebles & Norris '88
6 article as Exhibit 22.

7 -----

8 (1998 Peebles & Norris article
9 marked Exhibit No. 22.)

10 -----

11 BY MR. JAUREGUI:

12 Q. What's the subject matter of that article?

13 A. Strength Capabilities Of Humans.

14 Q. Did that study rely on any empirical data?

15 A. Yes.

16 Q. What typed of data?

17 A. Strength data.

18 Q. Can you be more specific?

19 A. Including pushing, rip strength, pinch
20 strength, twisting strength. Did I say pull
21 strength?

22 Q. Pull?

23 A. Pull.

24 Q. All right. What was the population that
25 that study was conducted about?

1 A. Ages 2 through 90.

2 Q. What were the conclusions of that study,
3 if any?

4 A. The conclusions were really the data
5 itself and the breakdown of the data that can be
6 considered.

7 Q. Do you know -- strike that. Do you know
8 if that article was peer reviewed?

9 A. I believe it was.

10 Q. So that article is now 22 years old,
11 roughly? Let me withdraw that question. Do you
12 know what was the period of time that they looked
13 at the data for?

14 A. I don't think it was -- I think it was an
15 experiment that was run I don't think over a --
16 for a long period of time. I think it was a more
17 punctate --

18 Q. A more what? I'm sorry.

19 A. More punctate.

20 Q. What do you mean by more punctate?

21 A. I don't think it was meant to span a
22 particular period of time, rather, I think the
23 experiment run in a single --

24 Q. Single run, one --

25 A. A single time frame. I'm not sure what

1 the time frame of when it was collected was.

2 Q. Do you know what were the items that were
3 used to test strength of the population of 2 to 90
4 years old?

5 A. There were a variety of instruments.

6 Q. Such as?

7 A. Such as -- can't find the specific
8 manufacturer or listing of the device, but it's
9 referenced as a force plate and variety of
10 attachments to allow for interaction, whether they
11 be pushed, pulled or some other manner of force.

12 Q. Did you say a forced plate?

13 A. Force.

14 Q. F-O-R --

15 A. F-O-R-C-E.

16 Q. Plate, P-L-A-T-E?

17 A. A device that measures how much force is
18 applied to it.

19 Q. Do you know what this study's objective
20 was?

21 MR. WILLIAMS: What's this study's
22 objective was?

23 BY MR. JAUREGUI:

24 Q. Objective was. Yes.

25 A. To collect data as to how much force could

1 be applied.

2 Q. Do you know who commissioned the study?

3 MR. WILLIAMS: If anyone.

4 THE WITNESS: I know that the
5 authors were part of the Product Safety
6 And Testing Group, School Of Mechanical
7 Materials Manufacturing, Engineering and
8 Management, the University of Nottingham,
9 University Park, Nottingham, U.K. I don't
10 know the funding source.

11 BY MR. JAUREGUI:

12 Q. This U.K., that's in the United Kingdom?

13 A. Yes.

14 Q. Do you know if anyone in the United States
15 used this article to make comparisons to the
16 ability of someone to operate a window covering
17 blind?

18 A. As I sit here I don't know anyone that's
19 made that specific comparison.

20 Q. Have you ever yourself used this article
21 in your opinions in other cases to show what the
22 amount of force may be needed to operate a given
23 product?

24 A. This is a source document that I often
25 considered.

1 Q. What other cases have you used this kind
2 of information?

3 A. Well, I've -- it's --

4 MR. WILLIAMS: Just I'll object.
5 Disclose any cases where you're doing
6 consulting work that is not of a public
7 nature.

8 THE WITNESS: I don't have a
9 complete list of all the -- all of my
10 cases in front of me, but this would be
11 something that as a human factor scientist
12 I often refer to to look to, and this
13 would be one of the documents that I used,
14 to look to the strength capabilities of
15 humans of different ages.

16 BY MR. JAUREGUI:

17 A. In your mind, as a human factors expert,
18 what are the similarities between a force plate in
19 a vertical blind with pull cords?

20 MR. WILLIAMS: Objection. Vague.

21 THE WITNESS: This, as I utilize
22 and I provide this, is information, what I
23 take from this is the general trends over
24 ages. And what this data generally shows
25 is that across a wide variety of force

1 applications, the ability to apply force
2 decreases as one ages.

3 BY MR. JAUREGUI:

4 Q. So the ability to apply force decreases as
5 someone ages?

6 A. Yes.

7 Q. That's common sense, isn't it?

8 A. I think that the degree to which it does
9 and the age of the profile of such is an area
10 where data can be collected and analyzed and used
11 to form decisions.

12 Q. All right. You've seen pictures of the
13 vertical blind at issue in this case, have you
14 not?

15 A. Yes.

16 Q. Do you know what is the amount of force
17 that is necessary to operate the window -- a
18 vertical window blind with a pull cord and the --
19 strike that. Do you know what is the amount of
20 force that it takes to operator a vertical blind
21 with a loop cord and a loop chain such as the one
22 at issue in this case?

23 MR. WILLIAMS: Objection. Vague.
24 Compound.

25 Go ahead.

1 THE WITNESS: I have not measured
2 the pull force that would have been
3 necessary to operate the subject vertical
4 blind.

5 BY MR. JAUREGUI:

6 Q. Have you seen any data from Hunter Douglas
7 telling you what is the amount of force that is
8 the necessary to operate the vertical blind at
9 issue in this case?

10 A. I have not seen that data.

11 Q. Wouldn't that data be relevant to your
12 opinions in this case?

13 MR. WILLIAMS: Objection. Vague.

14 THE WITNESS: I don't believe I
15 needed that data to render the opinions
16 that I've reached in this report.

17 BY MR. JAUREGUI:

18 Q. All right. What's the next set of records
19 you have in front of you, doctor?

20 A. Smith, Norris & Peebles, 2000.

21 MR. JAUREGUI: That would be
22 Exhibit No. 23, Smith, Norris & Peebles,
23 2000.

24 -----

25

1 (2000 Smith, Norris & Peebles
2 article marked Exhibit No. 23.)

3 -----

4 BY MR. JAUREGUI:

5 Q. Let me go back to the previous Exhibit,
6 Number 22. Did you rely on the study in Exhibit
7 No. 22 for the amount of force that is used to
8 operate any given product for any of your opinions
9 in this case?

10 A. It hasn't formed my general knowledge and
11 opinions in this case.

12 Q. What do you mean by that? Did you rely on
13 them or not?

14 A. I incorporated the data and the purpose of
15 the study and the analysis from the study into my
16 analysis of the current design and -- or the
17 design at issue and the issues into this case.

18 Q. Do you know whether or not there is any
19 difference in the amount of force that it takes to
20 operate the gadget that they tested in the article
21 that you mentioned earlier versus the amount of
22 force that it takes to operate the vertical blind
23 at issue in this case?

24 MR. WILLIAMS: Objection. Vague.

25 Go ahead if you understand. I

1 don't understand.

2 THE WITNESS: Can -- can you
3 repeat?

4 BY MR. JAUREGUI:

5 Q. The 1988 article by Peebles & Norris, that
6 was published in the U.K.; correct?

7 A. Well, it was published.

8 Q. Okay. And it dealt with the strength
9 capabilities of individuals, in this case a study
10 that was done in the pull, grip, spun, pinch,
11 twisting of individuals as it related to their
12 ability to operate the gadget that you identified
13 for me as a force plate?

14 A. The instrument. Yes.

15 Q. The instrument. All right. Now, my
16 question to you, then, given that, do you know
17 whether there are any differences in the amount of
18 force that it takes to operate the instrument in
19 the '88 article versus the amount of force that is
20 needed to operate the vertical blind at issue in
21 this case?

22 A. I'm sorry. I'm having trouble following,
23 because you say the amount of force to operate the
24 instrument. The instrument is a measuring device,
25 so it measures how much force one applies.

1 Q. I understand that. And my understanding
2 is that it must have taken a certain amount of
3 force to operate the instrument that was used in
4 the '88 study; correct?

5 A. No. That's not my understanding.

6 Q. All right. So what is your understanding
7 of this device?

8 A. This is a device, the instrument was a
9 device to measure how much force is applied to it.
10 There's -- there's no requirement of force to
11 operate it. It's simply a measuring device.

12 Q. All right. Fair enough. How is that,
13 again, that study relevant to the amount of force
14 that is used or necessary to operate a vertical
15 blind such as the one at issue in this case?

16 A. I think that what this article is evidence
17 of is that as we age, as we go through certain
18 periods of our life, we lose strength or the
19 ability to apply forces in certain interactions or
20 certain manners of application of force, and that
21 there is a pattern that they've identified that
22 shows this decline in force and application of
23 force.

24 Q. All right. Is the implication of your
25 opinions in this case that for a 90 year old

1 person it is easier to operate a vertical blind
2 with loop cords and loop chains rather than, you
3 know, a wand that has no cords for its operation?

4 A. There are a number of reasons why I
5 would -- I would think that the majority of 90
6 year olds would have easier accessibility -- more
7 accessibility to the loop chain or loop cord than
8 to the wand. That's what I've expressed in this
9 report.

10 Q. Tell me some of those reasons.

11 A. Again, as expressed in this article and in
12 my report, one of the reasons would be the loss of
13 strength and mobility and reach to perform the
14 necessary actions to operate the wand mechanism
15 versus the chain mechanism.

16 Q. Tell me specifically how is it different,
17 how do you envision that being different to
18 operating a vertical blind that has a loop cord
19 and a loop chain versus operating a vertical blind
20 with a wand?

21 A. What I -- going to my report, and I'd be
22 happy to go into here as well, is that the two
23 mechanisms require very different interactions.
24 In the instance of the loop chain and cord,
25 there's a single point of access through which one

1 needs to approach a single point, reach and pull
2 down or up on the -- one of the cords in order to
3 either adjust the tilt or angle of the shades or
4 to draw back or close the vertical shades
5 themselves.

6 The wand mechanism requires a wholly
7 different set of interactions in which the user
8 would have to approach the wand, reach for the
9 wand, and then either perform a pushing motion or
10 a pulling motion in order to draw the wand and
11 move with that product through the entire range of
12 the opening or the desired opening and closing in
13 order to draw the blinds. And then, in order to
14 adjust the tilt, my understanding is they would
15 need to perform a twisting action with their
16 finger, some fine motor control in order to adjust
17 the tilt of the vanes.

18 Q. Are these your opinions? Are these are
19 your personal opinions?

20 A. That's my understanding of how the design
21 is described and the operation of these
22 mechanisms.

23 Q. What empirical data do you have to base
24 your opinion that it's easier for a 90 year old
25 person, to use that example in this case, to

1 operate a vertical blind with the loop cord and
2 loop chain versus operating a vertical blind with
3 a wand?

4 A. The documents that I've cited in my report
5 when I've discussed this that detail out some of
6 the known limitations and capabilities of aging
7 populations as well as disabled populations. The
8 research that's been done -- excuse me -- that's
9 been done on accessibility to these -- these --
10 these groups, and my background, training and
11 education in areas of human factors.

12 Q. Are you referring to some of the articles
13 that we both reviewed or are there more
14 articles --

15 A. There are more articles.

16 Q. Well, we'll get to those, and I'll ask you
17 that question again.

18 Did you know of any data from Hunter
19 Douglas indicating that it is easier to operate a
20 vertical blind with loop cord and a loop chain
21 than it is to operate a vertical blind fitted with
22 a wand?

23 A. I have not received any such data from
24 Hunter Douglas.

25 Q. Did you ask them for my such data?

1 A. I had general requests for information
2 from Hunter Douglas. That sort of data, I think,
3 would have been within the type that we've
4 discussed, and I have not seen that data.

5 Q. Do you know if they have that data and
6 they simply didn't give it to you or they do not
7 have that data?

8 A. I'm not sure what -- what or where data is
9 within Hunter Douglas. I don't have that
10 knowledge.

11 Q. Is there any other type of data that you
12 requested from Hunter Douglas that was not
13 provided to you?

14 A. I -- again, I don't think that this can be
15 characterized as data that I -- that I requested
16 that's not been provided to me. I think that I've
17 had discussions as to what data I would be basing
18 my analysis on. And if this data was available
19 and it was provided, I would have considered it,
20 but I didn't see that data. I don't know what
21 data they do or do not have.

22 Q. What type of data did you have in mind?

23 A. The data that we've been discussing as to
24 the populations of -- of users.

25 Q. So none of that data was provided to you?

1 A. I did not receive any of that data. Like
2 I said, there -- there -- the -- the -- I don't
3 think that that is appropriate to phrase it that I
4 have requested it and it has not been provided,
5 rather, I have not been in receipt of this data if
6 it should exist.

7 Q. And if it exists, that would be more
8 relevant to your analysis, would it not?

9 MR. WILLIAMS: Objection. Vague.
10 More irrelevant than what?

11 BY MR. JAUREGUI:

12 Q. From the data that you're relying upon
13 which has nothing to do with window blinds such as
14 the 1988 study conducted in the United Kingdom.

15 A. No. I don't think that it necessarily
16 would be more relevant. I think that these issues
17 that human factor scientists look into are related
18 to human capabilities and limitations, and they're
19 very well documented in the literature and
20 available for application to a wide range of
21 discussions.

22 Q. Are you aware now that there are many
23 studies in the United States indicating that
24 elderly people are a lot more active and remain
25 more active into their later years than they used

1 to some years ago?

2 A. I would have to have some more detail as
3 to those -- those sorts of articles, but that
4 could be your representation of them.

5 Q. Do you know whether any of the data that
6 you have in mind or any -- strike that. Do you
7 know whether any of the information that you have
8 in mind about the inability of elderly people to
9 operate a vertical blind with a wand, do you know
10 if any studies have been done, for example, in
11 nursing homes?

12 A. If you're asking me specifically about the
13 data that I've -- I've looked at and considered or
14 cited in my report, I don't believe anything
15 specifically was designed to address nursing homes
16 specifically.

17 Q. Wouldn't you find data specifically
18 relevant in terms of the ability of the elderly
19 population to operate certain products?

20 MR. WILLIAMS: I'm sorry. Can I
21 have that --

22 MR. JAUREGUI: Let me withdraw that
23 question.

24 MR. WILLIAMS: Let's take a break
25 after this question.

1 MR. JAUREGUI: No. This is a good
2 time to take a break, because we're going
3 to go into the next Exhibit.

4 MR. WILLIAMS: Let's take a break
5 before the next question.

6 Ten minutes, Mike.

7 -----

8 (Off the record at 10:57 a.m.)

9 -----

10 (On the record at 11:04 a.m.)

11 -----

12 MR. JAUREGUI: All right. I think
13 we're up to Exhibit No. 24.

14 Mike, are you there?

15 MR. WEISS: I'm here.

16 MR. JAUREGUI: All right, Mike.

17 We're back on the record.

18 BY MR. JAUREGUI:

19 Q. Can you please tell me the next set of
20 records that you have in your materials.

21 A. The next is a publication by Story, et al.

22 Q. What's the date of that publication?

23 A. 1998.

24 MR. JAUREGUI: We're going to mark
25 the Story, et al publication as Exhibit

1 | No. 24.

2 | -----

3 (Publication by Story, et al marked
4 Exhibit No. 24.)

5 | -----

6 BY MR. JAUREGUI:

7 Q. What's the subject matter of that
8 publication?

9	A. Universal design.
---	----------------------

10	Q. Can you tell me more?
----	--------------------------

11 A. Sure. Universal design is generally
12 principles behind designing accessible products
13 for a range of ages and abilities.

14 Q. Any of the authors of the articles that we
15 have reviewed thus far, do any of these authors
16 have any relationship or affiliation with Exponent
17 Failure Analysis?

18	A.	Not to my knowledge.
----	----	----------------------

19 Q. All right. So what's the general tenet of
20 that publication?

21 A. Again, this is information about
22 considering abilities, ranges of abilities,
23 limitations and ages when designing products and
24 is really the basis for the opinions I reach as to
25 how different designs may be more or less

1 appropriate for different groupings based on
2 ranges of abilities and capabilities and
3 limitations.

4 Q. Do you know the publication that deals
5 specifically with any particular type of consumer
6 products?

7 A. It's a range of products.

8 Q. What is the range?

9 A. Very, very wide range. They deal with
10 principles and design and focus more on the
11 abilities and limitations of people, and then give
12 examples of how some of these are incorporated
13 into certain designs of products.

14 Q. Do you know whether window coverings is
15 one of the products that is incorporated into the
16 discussion of that article?

17 A. I do not believe it is.

18 Q. Do you know if any of the products
19 discussed in that publication are products that
20 are considered to be unreasonably dangerous to
21 young children?

22 A. I don't believe they are.

23 Q. Of what relevance, if any, is the Story,
24 et al '88 publication at all to your opinions in
25 this case?

1 A. Again --

2 MR. WILLIAMS: '88 or '98?

3 THE WITNESS: It's '98.

4 BY MR. JAUREGUI:

5 Q. '98. With that correction.

6 A. Again, this serves as part of the basis
7 for my opinions about the different design options
8 and the different degrees of accessibility the
9 design options may have for ranges in the
10 population.

11 Q. Are you then saying that, again, a
12 vertical blind designed with a loop cord and loop
13 chain is accessible to a wider range of population
14 than the same vertical blind this time with a
15 wand?

16 A. What I'm saying is that the one design may
17 have greater accessibility to certain ages or
18 ranges of population based on the analysis that I
19 performed in these articles and my analysis as
20 presented in the report.

21 Q. And in this instance which design is more
22 accessible to a wider range of population?
23 Vertical blinds with the loop and -- cord and loop
24 chain or the vertical blind with the wand?

25 A. I haven't attempted to quantify which

1 one would be more or to a wider range. Rather,
2 I think that in my report I've identified
3 certain limitations that would prove difficult
4 for certain populations to operate a wand but
5 would have greater accessible to something like a
6 chain.

7 MR. JAUREGUI: Can you read me back
8 the answer, please.

9 -----

10 (The court reporter read back the
11 last answer.)

12 -----

13 BY MR. JAUREGUI:

14 Q. So which blind has more limitations to the
15 larger population. One with the wand, a vertical
16 blind with a wind or a vertical blind with a loop
17 chain and cord?

18 MR. WILLIAMS: Objection. It's
19 vague.

20 Go ahead if you can.

21 THE WITNESS: Again, I -- I don't
22 think I've offered an analysis or opinions
23 to try and compare between the two, the
24 merit or the range of populations, try to
25 compare between them. What my report and

1 the opinions expressed therein are aimed
2 at is the fact that the differences in the
3 design makes them different as to the
4 accessibility certain populations may have
5 to them.

6 Like I said previously, I haven't
7 tried to quantify which one would be more
8 or less accessible to a wider range of
9 which I'm understanding your question to
10 be, but rather, that certain limitations
11 would pose difficulties for a design
12 whereas the alternative design would be
13 more accessible to this range of
14 population.

15 BY MR. JAUREGUI:

16 Q. I understand your answer. What I'm trying
17 to understand is, in your mind which design poses
18 more limitations and difficulties to a population
19 than the other?

20 MR. WILLIAMS: Same objection.

21 THE WITNESS: Again, I don't
22 believe that I can answer that in the very
23 general and broad sense that you've asked
24 the question.

25 BY MR. JAUREGUI:

1 Q. So how would you answer that?

2 A. If we were to talk about a specific
3 population, for example, if we were to say a
4 population of someone that was seated in a
5 wheelchair, then I think that based on everything
6 I've seen or I've considered and relied on as a
7 basis and the design, that the chain and loop
8 would be more accessible, more accessible to them
9 than a wand mechanism to control.

10 Q. What about a 90 year old person that is
11 still mobile and not sitting in a wheelchair?
12 Which model would be more accessible to a 90 year
13 old person?

14 A. Based -- I think that based on what,
15 again, on the articles that I have provided as
16 references, basis of my opinions and my
17 educational experience and training, that in
18 general I would expect the loop and pull cord
19 to have greater accessibility than a wand.

20 Q. And, again, none of those articles have
21 dealt specifically with the ability of the elderly
22 population to operator window covering blinds; is
23 that correct?

24 A. Their general abilities, capabilities,
25 limitations and performance that we know of due to

1 aging.

2 Q. What is the next document in your
3 materials?

4 A. The next article is an article by Perry,
5 2010.

6 MR. JAUREGUI: Perry 2010 article
7 would be marked as Exhibit 25.

8 -----

9 (Perry 2010 article marked Exhibit
10 No. 25.)

11 -----

12 BY MR. JAUREGUI:

13 Q. Can you tell me what is the subject matter
14 of that article?

15 A. Aging and age-related declines in
16 performance.

17 Q. Where did that article appear? In what
18 publication?

19 A. The article appeared in Professional
20 Safety.

21 Q. And what is that, Professional Safety?

22 A. It's a journal.

23 Q. Do you subscribe to that?

24 A. I do not subscribe to that journal.

25 Q. With all of the articles and applications

1 that we have reviewed thus far, did Hunter Douglas
2 or anyone from Hunter Douglas, including your
3 attorney, Mr. Williams, ask you to incorporate any
4 of these materials in that analysis?

5 A. These were all the materials that I have
6 brought into the case.

7 Q. So it was your decision to select these
8 materials?

9 A. This were -- these were materials that I
10 reviewed independently and have -- have provided
11 as basis for my opinions.

12 Q. What is the general gist of the 2010 Perry
13 article?

14 A. Again, there are a number of changes that
15 have an identifiable pattern that result in
16 performance, decrements, physical, cognitive, as
17 we age.

18 Q. Did that article deal with the decrease in
19 physical force, cognitive ability in relation to
20 any particular products?

21 A. Not to particular products. It's more
22 general than that.

23 Q. Do you know if anyone commissioned that
24 article?

25 A. I don't know the funding source.

1 Q. What significance, if any, does that
2 article have to your opinions in this case?

3 A. Again, this is part of the basis of my
4 opinions as to the limitations of populations and
5 how this can be, or this is incorporated into the
6 designs of products and what can be more or less
7 successful under, that is, design changes.

8 Q. Do you know if that article dealt with the
9 physical or cognitive ability of individuals to
10 operate window covering?

11 A. I don't believe that that was specifically
12 considered.

13 Q. What is the next document?

14 A. The next document is Biren & Schaie.

15 MR. JAUREGUI: We are going to mark
16 the Biren & Schaie '06 article as Exhibit
17 No. 26.

18 -----

19 (2006 Biren & Schaie article marked
20 Exhibit No. 26.)

21 -----

22 BY MR. JAUREGUI:

23 Q. What is the subject matter of that
24 publication?

25 A. Again, subject matter is aging and the

1 patterns of performance and limitations associated
2 with aging.

3 Q. Do you know what was the setting of -- is
4 it a study or article?

5 A. This is a text.

6 Q. It comes from -- it's a chapter from a
7 textbook?

8 A. Yes.

9 Q. What's the name of the textbook?

10 A. Handbook Of The Psychology Of Aging.

11 Q. Do you know whether that particular
12 chapter deals with the issue of the elderly
13 population's ability to operate window coverings?

14 A. Not specifically window coverings.

15 Q. What are the products, if any, the article
16 addressed?

17 A. The article addresses aging complexity and
18 motor performance, and so it is specifically
19 addressing motor performance and changes as we
20 age.

21 Q. What significance, if any, is that study
22 to your opinions in this case?

23 A. Again, this is an article that I'm
24 providing as part of the basis for my opinions
25 related to various designs and the accessibility

1 that different designs have to different
2 populations based on limitations and capabilities
3 of humans.

4 Q. What's the next document that you have in
5 your materials?

6 A. This is actually -- there are two sets of
7 studies here. Strength Data For Design Safety.

8 Q. What's the date of that study? Tell you
9 what, let's come back to that. Let's see the
10 other article, since you have two in one. What's
11 the other article that you have there?

12 A. One is -- the first one is Phase 1.

13 Q. Okay. And the second one?

14 A. Phase 2.

15 Q. That makes sense. Right. All right.
16 Does it have the same title?

17 A. Yes. Strength Data For Design Safety.

18 Q. What is the date -- let's strike whatever
19 I said before.

20 MR. JAUREGUI: Let's go ahead and
21 mark as Exhibit No. 27, Phase 1 and Phase
22 2 studies entitled Strength Data For
23 Design Safety.

24 -----

25 (Phase 1 and Phase 2 of Strength

1 Data For Design Safety marked Exhibit
2 No. 27 for identification.)

3 -----

4 THE WITNESS: Just so I understand,
5 Exhibit 27, Phase 1 and Phase 2, the
6 sticker should go on Phase 2?

7 MR. JAUREGUI: On the first one.
8 It encompasses both studies, so you should
9 put it at the beginning. That would be
10 Group Exhibit 27, encompassing Phase 1 and
11 Phase 2 of that study.

12 MR. WILLIAMS: I'm sorry. Was
13 there was a year for that, a date --

14 MR. JAUREGUI: No. We're getting
15 to that.

16 BY MR. JAUREGUI:

17 Q. What was the publication for Phase 1
18 first?

19 A. October 2000.

20 Q. All right. That's for Phase 1. And the
21 publication for Phase 2?

22 A. June 2002.

23 Q. All right. You told me the title of
24 Phase 1 and Phase 2 of that study. Why don't we
25 take a look at Phase 1 first, Strength Data For

1 Design Safety. What specifically did that Phase 1
2 address?

3 A. This, again, is a -- a -- a compendium of
4 strength data for different applications of force
5 across ages.

6 Q. Do you know whether the strength data for
7 different applications was tested on different
8 products?

9 A. This was -- I don't believe it was tested
10 on products but on measuring devices.

11 Q. Do you know what type of measuring
12 devices?

13 A. In Phase 1 under Equipment, it identifies
14 the different pieces of equipment that was used.
15 Do you want me read them into the record?

16 Q. Yes.

17 A. "Finger push strength, pinch-pull strength
18 and wrist twisting strength were measured on a
19 series of specially made handles which were
20 attached to a Mecmesin Advanced Force Gauge
21 (AFG 500N). Hand grip strength was measured using
22 a Handgrip Dynamometer (MKIIIIa) made by the
23 Medical Physics Department, Queen's Medical
24 Centre, Nottingham, U.K. Opening strength and
25 push and pull strength were measured with the aid

1 of strain gauges which were attached to
2 custom-made equipment."

3 Q. Do you know whether any of the items
4 tested in that study included window coverings?

5 A. Again, this did not test certain products
6 but, rather, tested the abilities of people to
7 apply forces in a variety of interactions.

8 Q. What were the age ranges that were tested
9 in that study?

10 A. Two through ninety.

11 Q. What conclusions, if any, did that study
12 reach, Phase 1?

13 A. Again, the conclusions are couched in the
14 form of the results that they provide as to how
15 much force people of varying age groups can apply
16 through a given interaction.

17 Q. What significance, if any, does this study
18 have on your opinions?

19 A. Again, this is part of the basis for my
20 opinion that the designs provide different
21 accessibility to different populations based on
22 their capabilities and limitations.

23 Q. What about Phase 2? Was it dealing with
24 the same subject matter as Phase 1?

25 A. Similar subject matter. Yes.

1 Q. All right. What were the conclusions of
2 that study?

3 A. Very much the same. They were just
4 different tests.

5 Q. What was the test that was in Phase 2?

6 A. Different -- different interactions. They
7 had some different forms or interactions to
8 measure the ability of people to apply force.

9 Q. Did Phase 2 of that study include the
10 ability of people to operate window blind
11 coverings?

12 A. Window coverings were not used in these
13 studies.

14 Q. What significance, if any, does the
15 Phase 2 Strength Data For Design Safety article
16 have on your opinions in this case?

17 A. It would be -- my answer would be the same
18 as I provided for Phase 1.

19 Q. What's the next document you have there?

20 A. Smith, et al, 1999.

21 MR. JAUREGUI: We're going to mark
22 that article Exhibit No. 28, Smith et al,
23 '99.

24 -----

25 (1999 Smith, et al article marked

1 Exhibit No. 28.)

2 | -----

3 BY MR. JAUREGUI:

4 | Q. What's the subject matter of that article?

5 | A. Decline in fine motor abilities associated
6 | with aging.

7 Q. What was the context in which that study
8 was conducted?

9 A. Looking at human aging and how abilities
10 to perform fine motor hand movements decreased.

11 Q. Is it your testimony here today that in
12 order to operate a vertical blind, it requires
13 some type of fine motor skills whereas the ability
14 to operate a window blind, just a vertical blind
15 with loop pulls and loop chains does not require
16 fine your motor skills?

17 A. I don't think that is characterization of
18 my testimony. I think that I'm using this as a
19 basis for, again, the -- my opinion associated
20 with the fact that different designs will be more
21 or less accessible to different populations based
22 on how one is intended to interact with it.

23 Q. Generally, given the studies that you
24 reviewed, I take it that your opinion would be the
25 older you get -- as you get older, whether the

1 ability to use your fine motor skills decrease.

2 A. The fine motor abilities decrease as one
3 ages. And so performing operations or interacting
4 with products that require fine motor skill or
5 fine motor ability would be more difficult than a
6 set of actions that doesn't require fine motor
7 skills.

8 Q. Keeping that very answer, are the skills
9 you use to operate a window blind covering with
10 loop cords and a loop chain different than the
11 skills to operate a vertical blind or a window
12 covering with a wand different in terms of whether
13 one requires fine motor skills and the other does
14 not?

15 A. Yes. I believe that certain aspects of
16 the way one would interact with the wand would
17 differ from how one would interact with the loop
18 cords, and certain interactions with the wand
19 would require greater fine motor skills than with
20 the loop cords.

21 Q. If you leave, the example that you gave me
22 earlier of someone sitting in a wheelchair, if you
23 take the wheelchair out of the equation, your
24 answer is the same?

25 A. Yes. I believe it is.

1 Q. What was the relevance of the Smith, et al
2 '99 article to your opinions in the case?

3 A. I believe I covered that in one of my
4 previous answers on this article. But, again,
5 basis -- part of the basis of my opinions relating
6 to the design, different designs having different
7 accessibility to different populations.

8 Q. What's the next article you have there?

9 A. Publication Morrongiello, et al, 2004.

10 Q. Is that an article or book chapter? What
11 is that?

12 A. It's an article.

13 Q. It's an article.

14 MR. JAUREGUI: We'll label the
15 Morrongiello article Exhibit 29.

16 THE WITNESS: That's probably the
17 correct way to pronounce it.

18 MR. JAUREGUI: Just made it up.

19 -----

20 (2004 Morrongiello, et al article
21 marked Exhibit No. 29.)

22 -----

23 BY MR. JAUREGUI:

24 Q. What is the subject matter of that
25 article?

1 A. The subject matter is parental supervision
2 and the methods employed by parents to supervise
3 or control hazards in the household.

4 Q. Do you know if that article dealt with the
5 subject of parental supervision as it deals with
6 the interaction of children with window coverings?

7 MR. WILLIAMS: Specifically?

8 MR. JAUREGUI: Yes.

9 THE WITNESS: Not specifically
10 window coverings. It dealt more with the
11 issues of supervision by the room in which
12 children are located and different styles
13 of supervision.

14 BY MR. JAUREGUI:

15 Q. And you have opinions in this case, do you
16 not, as to supervision that the Padillas provided
17 to the child in relation to the safety measures
18 that they took with regard to the vertical blinds?

19 A. Can you repeat that question?

20 Q. Never mind. I'll withdraw it. We'll get
21 to your opinions. What relevance, if any, is the
22 Morrongiello study to your opinions in this case?

23 A. The articles and the subject matter is
24 incorporated on the basis of for my opinions
25 related to the types of supervision one might

1 expect parents to engage in and different types of
2 control mechanisms one might be engaged in in
3 child safety in different rooms of the house.

4 Q. Where was that article published?

5 A. Journal Of Pediatric Psychology.

6 Q. Who reads the article?

7 A. I'm sorry?

8 Q. Who reads those articles? What's the
9 intended population of that publication, if you
10 know?

11 A. Well, I think that quite often researchers
12 will read this. This is a form of a basic
13 research. I don't know what the readership of
14 this journal -- demographics of this journal are.

15 Q. What relevance, if any, does the
16 Morrongiello study -- I'm sorry. I think I
17 already asked you that question. What is the next
18 item that you have there?

19 A. The next article is Mack & Rock, 1998.

20 MR. JAUREGUI: We'll label the
21 Mack & Rock '98 article as Exhibit
22 No. 30.

23 THE WITNESS: It is actually a
24 book. When I checked out the book, it's a
25 chapter from the book.

1 (1998 Mack & Rock chapter from
2 Inattentional Blindness marked Exhibit
3 No. 30.)

4 -----

5 BY MR. JAUREGUI:

6 Q. What is the particular chapter of the
7 book?

8 A. This particular chapter introduces an
9 overview of the act of inattentional blindness.

10 Q. What book was it published in?

11 A. Inattentional Blindness.

12 Q. What does that subject deal with?

13 A. The subject generally deals with the
14 cognisystem of attention and perception.

15 Q. How is that relevant to the dangers of
16 strangulation that are posed to young children
17 from window covering cords?

18 A. This is information that I -- serves as a
19 basis for opinions related to safety information
20 and one's attention to and noticing of safety
21 information.

22 Q. So, basically, this has to do with the
23 issue whether or not consumers pay attention to
24 ordinance?

25 A. This is actually more general to how

1 people attend to and perceive and take in the
2 world around them and can be applied and has been
3 applied to safety information.

4 Q. Do you know if anyone other than yourself
5 has ever used this study to compare it to how
6 people attend to or perceive the danger posed to
7 young children from window blind coverings?

8 A. I don't know.

9 Q. Is this the first time that you used this
10 study in this context?

11 A. Specific to window blind coverings --

12 Q. Yes.

13 A. -- have I used this? Yes. I believe that
14 this is the first -- my first presentation of this
15 material in that way.

16 Q. Can you tell me specifically what that
17 study dealt with? Was that a study that was done
18 in a lab, in a classroom setting? How was the
19 study conducted?

20 A. Again, this is not a -- this is a
21 textbook, and the topic is inattentional
22 blindness. It's not a single study.

23 Q. Oh, okay. So it's -- what would you call
24 that?

25 A. There are a number and series of studies

1 that deal with the topic of attention, which is a
2 cognitive construct that dictates how or provides
3 information about how we perceive the world around
4 us. And this book and this idea is a -- is a, I
5 guess, a summary or a collection of what we've
6 learned from research into this area.

7 Q. As you sit here today, do you know what
8 the people that participated in that article,
9 review, study, whatever you want to call it, what
10 were they asked to look at and compare it and then
11 they were asked questions about their perception
12 or their attention to the given questions that
13 they were asked about?

14 A. I am familiar with many of the studies
15 that are referenced in this field of research.

16 Q. Okay. We had that article pulled from the
17 internet, and my recollection is that it had some
18 kind of, like, charts with various similar figures
19 within that chart, and people were asked to take a
20 look at a given chart and compare it to the next
21 chart, and they were asked to tell apart the
22 similarities. Is that what you recall?

23 A. That's -- that's one type of study that
24 goes into this research.

25 Q. Okay. What does that have anything to do

1 with window covering hazards as they pose a danger
2 to children?

3 A. Again, I explained how -- what this is a
4 basis for. This is a basis for how people attend
5 and take in and process information from their
6 surroundings.

7 Q. You said there are significant differences
8 whether people in that article were asked to view
9 a piece of paper with some drawings as opposed to
10 them transferring that information to an actual
11 physical product, a blind, and you're
12 extrapolating as to whether or not parents would
13 pay attention to either whether or not they had
14 any warnings or whether or not the particular
15 blind in issue posed a particular risk for their
16 children.

17 MR. WILLIAMS: Wait. I don't know
18 if there was a question there. If it was,
19 it occurred a long time ago at the
20 beginning. I think you started out by
21 saying, isn't there a difference. And if
22 that's your question --

23 MR. JAUREGUI: Yes.

24 MR. WILLIAMS: -- vague and
25 ambiguous and unintelligible.

1 THE WITNESS: Can you rephrase the
2 question?

3 BY MR. JAUREGUI:

4 Q. Yes. Isn't there a difference in the
5 level of attentiveness or perception of how a
6 parent may perceive the danger that is posed by a
7 physical product such as a window blind with loop
8 cords versus the attentiveness or the perception
9 of someone that is in a controlled setting and is
10 asked to look at charts or drawings and asked to
11 tell the difference between the drawings?

12 MR. WILLIAMS: Same objection.

13 THE WITNESS: I don't think I can
14 answer the question you're posing because
15 you're mixing a lot of ideas that are
16 being brought to bear here. The basic
17 research that I am citing as a basis for
18 my opinions as to how people attend is
19 what we know of the basic perceptual and
20 attentive processes humans engage in,
21 regardless of situation. There is
22 something that, from basic science into
23 visual perception and cognition, there --
24 we know how people attend to and extract
25 information. That's the basic science

1 that I am drawing on as a basis for
2 opinions that I've combined with other
3 research on warnings and behavioral
4 response to safety information.

5 BY MR. JAUREGUI:

6 Q. All right. And for the purpose of the
7 opinions in the case, one of your opinions, on
8 Page 14 you state, even if there had been
9 additional warnings in the case given the
10 Padillas' conduct, those warnings would not have
11 made a difference.

12 A. I think that's a paraphrase of my
13 opinions.

14 Q. Oh, please, take a look on Page 14. It's
15 one of your last opinions there.

16 A. Right. The last bullet point which reads,
17 "Mr. and Mrs. Padilla did not demonstrate safety
18 information seeking behaviors with respect to
19 child safety in general and that related
20 specifically to window coverings and displayed
21 limited response to knowledge and obvious safety
22 concerns. There is no scientific reason to
23 believe that additional or alternative warnings or
24 safety information provided with the product would
25 have altered their behavior and averted this

1 incident."

2 Q. Are you talking about that inattentive
3 blindness there?

4 A. That -- I'm talking about the -- the basic
5 way in which people perceive the world around them
6 and the way in which our information and
7 perceptual systems are designed to process
8 information, and that factors into my analysis as
9 to whether additional and alternative information
10 that would have been in the environment would have
11 changed or affected their behaviors.

12 Q. And one of the articles that you relied on
13 for that opinion is that article, Inattentive
14 Blindness --

15 A. That is --

16 Q. -- is it not?

17 A. That is a -- that is a basis of science's
18 understanding of how people process and attend and
19 perceive information in the world around them.

20 Q. And you relied on that article for your
21 opinions in this case?

22 A. That is the basis of my opinions.

23 Q. And to your knowledge that article has
24 never been discredited by anyone in the field?

25 MR. WILLIAMS: Objection. Vague.

1 It's what he means discredit. Criticize

2 --

3 BY MR. JAUREGUI:

4 Q. Did anyone question the findings in
5 today's environment, its conclusions, as far as
6 you know?

7 A. As far as I know, I think that this is a
8 fairly well -- a fairly well regarded study. And
9 upon my review of the data, it holds significant
10 merit.

11 Q. Okay. Have you relied on this case to
12 offer opinions in other consults or similar cases?

13 MR. WILLIAMS: Regarding this
14 article? You said this case.

15 BY MR. JAUREGUI:

16 Q. This article. Yes.

17 A. I've presented this article as a basis for
18 opinions on how people perceive and attend to
19 items in their environment in other cases.

20 Q. Okay. Can you give me some examples of
21 those cases? Are they on your -- Exhibit 3 of
22 your list of selected cases attached to your
23 Curriculum Vitae?

24 A. Some of them would be. Yes.

25 Q. Okay. Could you review those cases for

1 me?

2 A. I believe that I based this off of my
3 memory of the articles I've -- and some of the
4 research I've provided for the basis for my
5 opinions in other cases.

6 Q. Okay.

7 A. I believe that I've utilized this article
8 in Phillips V Comcast.

9 Q. Is that the very last case?

10 A. Yes. Cooper V Racetrac. Metso Paper --

11 Q. Hold on a second. I'm trying to find it
12 here.

13 A. I'm going in reverse order.

14 Q. Oh, okay. Where's Cooper at?

15 A. The next case up from Phillips.

16 Q. All right. Juliet Green Cooper. Okay. I
17 didn't see that. Okay.

18 A. Metso Paper V General Electric.

19 Q. All right.

20 A. I likely would have referenced that in
21 Moyer V Albert Einstein Health Care Network. It's
22 kind of difficult to remember back.

23 Q. Okay. That's fine. Do you know what were
24 the issues in Phillips V Comcast?

25 A. Attention and visual perception.

1 Q. To what?

2 A. To warnings and the environment and visual
3 features of the environment.

4 Q. What were the issues in that litigation?

5 A. What do you mean by issues?

6 Q. What was being litigated? You were
7 brought in as an expert. What were you asked to
8 opine on attention and visual perceptions? In
9 what context?

10 A. In the context of a -- generally, that was
11 operating a scooter in a parking facility or
12 parking lot, and he ran into or drove into a
13 barrier of sorts.

14 Q. And the issue was whether or not he had
15 perceived any warnings or the dangers caused by
16 the barrier?

17 A. Some of the issues in this case were
18 whether or not this barrier would have been
19 visible to him and whether additional signage or
20 warnings in the area would have altered his
21 behavior.

22 Q. Did you testify at trial in that case?

23 A. I did.

24 Q. What was the outcome of that case?

25 A. I believe -- you know, I -- I think it

1 was -- I think it was a split and attribution of
2 fault. I'm not...

3 Q. What about Juliet Green Cooper?

4 A. That was a warnings issue related to
5 warnings accompanying a fuel pump.

6 Q. In a motor vehicle?

7 A. Well, at a gas station.

8 Q. And your testimony, there was no
9 additional warnings would have changed the outcome
10 in that case?

11 A. Having difficulty remembering the
12 specifics, so I'd rather not --

13 Q. Do you know what the outcome of that case
14 was?

15 A. I believe it's ongoing. I gave a
16 deposition.

17 Q. All right. What about Metso Paper versus
18 USA?

19 A. This was a warnings case about warning on
20 a -- safety information provided with a metal
21 halide lamp.

22 Q. What was the outcome of that case?

23 A. Again, it's an ongoing deposition.

24 Q. Moyer, what was your testimony in that
25 case?

1 A. That was a case involving a woman that --
2 that was attempting to hold open a sliding door.

3 Q. And the issues was warnings?

4 A. That was one of the issues.

5 Q. And in that case you relied on the article
6 Inattended Blindness as well?

7 A. As to -- to address issues of what would
8 have been perceptible to the scene as she
9 approached this doorway. Yes.

10 Q. In the four cases that we've reviewed thus
11 far, none of those cases involved injuries to
12 children; correct?

13 A. Those do not involve injuries to children.

14 Q. And none of those cases involve injuries
15 to people from window coverings; correct?

16 A. Those do not involve window coverings.

17 Q. What's the next document you have there?
18 We're up to now 31.

19 A. This article is Simons & Chabis, 1999.

20 MR. JAUREGUI: We're going to mark
21 the Simons & Chabis 1999 article as
22 Exhibit 31.

23 -----

24 (1999 Simons & Chabis marked
25 Exhibit No. 31.)

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BY MR. JAUREGUI:

Q. What was the subject matter of that article?

A. This was similar to the Mack & Rock chapter. This deals with the inability of people to perceive objects in their environment.

Q. Is it an article or a chapter from a book?

A. It's an article.

Q. Where was it published, by publication?

A. Perception.

Q. Do you subscribe to that publication?

A. I do not subscribe to that publication.

Q. What is the intended audience for that publication?

A. I think that Perception has been read by scientists in the field of perception and cognition, but I'm not aware of what the full reader demographics are of the journal.

Q. Of what significance, if any, is the Simons & Chabris article to your opinions in this case?

A. Again, this is -- this is basic research that informs us as to the ability of people to perceive and detect things in the world around

1 them specifically as it relates to attention and
2 goal-oriented behaviors.

3 Q. Did that article study the behavior of
4 people in relation to any specific problems?

5 A. Not in relation to specific problems. No.

6 Q. What was the setting of that study, do you
7 know?

8 A. It was a laboratory setting.

9 Q. Controlled environment?

10 A. It was a controlled environment.

11 Q. Do you know if that publication dealt with
12 the issue of strangulation of young children from
13 window blind coverings?

14 A. It did not.

15 Q. What's the next document that you have
16 there. Let me -- let me go back here. Did you
17 rely on that article for your opinions in this
18 case?

19 A. Again, this is part of the basis of my
20 opinions as it relates to perception and visual
21 attention.

22 Q. Exhibit No. 32 for your next document,
23 whatever that is.

24 (1998 Simons & Levin publication
25 marked Exhibit No. 32 for identification.)

1 BY MR. JAUREGUI:

2 Q. All right. What do you have there next?

3 A. Simons & Levin, 1998.

4 Q. What's the subject of that publication?

5 A. Similar subject as the previous two.

6 Q. And that is?

7 A. The way in which people perceive and
8 detect items in the world around them and the role
9 attention plays in this.

10 Q. Does the article have a title?

11 A. The article does.

12 Q. What's the title?

13 A. Failure To Detect Changes To People During
14 Real World Interaction.

15 Q. Failure to deduct --

16 A. To detect.

17 Q. Changes --

18 A. To People --

19 Q. Okay.

20 A. -- During A Real World Interaction.

21 Q. Was it a study or article? What kind of
22 publication was that?

23 A. It was a study.

24 Q. What did it study? Were there any
25 specific products that were analyzed in that

1 study?

2 A. Not specific products, but cognitive
3 processes and perceptual processes of humans.

4 Q. I take it window blind coverings were not
5 one of the products that was discussed in that
6 article?

7 A. That was not discussed in that article.

8 Q. What relevance, if any, are the -- let me
9 withdraw that question. What were the conclusions
10 of that article?

11 A. The conclusions that -- were that, I
12 think, largely the fact that people are often
13 blind to changes in visual information in their
14 environment that they are not attending to, and
15 that people fail to perceive and fail to detect
16 information within their environment to which they
17 are not specifically attending.

18 Q. What significance, if any, does this
19 article have to your opinions in this case?

20 A. Again, this is -- this is the basis of
21 scientific research on how people perceive and
22 attend to and interact with the world around them,
23 and how the basic capabilities and limitations of
24 our cognitive and perceptual systems dictate what
25 information we may or may not take in from the

1 world around us.

2 Q. Is this relevant to the issue of how
3 people perceive risk?

4 A. I'm sorry?

5 Q. Is this article relevant to how people, in
6 this case consumers, perceive the risk of danger?
7 Risk of danger.

8 MR. WILLIAMS: Objection.

9 BY MR. JAUREGUI:

10 Q. Of any given product.

11 MR. WILLIAMS: Go ahead.

12 THE WITNESS: I've had -- I'm
13 having trouble incorporating your --

14 BY MR. JAUREGUI:

15 Q. All right. Let me withdraw that question.
16 How is this article relevant to the issue of how
17 people, consumers in this case, perceive the risk
18 of strangulation to young children from window
19 covering cords?

20 A. This article and the way in which I am
21 basing opinions on this and other articles in my
22 report is relevant to the -- the detection and
23 attention given to safety information that might
24 be presented in terms of warnings, or whatnot, to
25 people within the environment. That would relate

1 to the risk of strangulation, as I understand your
2 question.

3 Q. All right. Do you know the risk of
4 strangulation that is posed to window coverings to
5 young children, whether that risk of strangulation
6 is an open obvious or is it a latent and hidden
7 danger?

8 A. Can you repeat that.

9 Q. Do you know whether the danger of
10 strangulation to young children from window
11 covering cords, in your view is that an open and
12 obvious danger or is it latent and hidden?

13 A. I think the -- the -- you know, some of
14 those terms I would wrestle with in terms of
15 trying to define. I think that there are aspects
16 of the hazard that some people would be able to
17 appreciate and would determine to be hazardous,
18 and there are -- there are other segments that may
19 not be fully aware of that hazard's present --
20 presence, whether it be because they have not
21 sought the information to -- to be informed of
22 that or whether they fail to detect the presence
23 of something like the window cord in that
24 environment.

25 Q. You're an expert in human factor analysis;

1 correct?

2 A. Um-hum.

3 Q. And one of the issues that you look at is
4 the cognitive ability and the perception ability
5 of people to perceive the world that surrounds
6 them; correct?

7 MR. WILLIAMS: The world that
8 surrounds them?

9 MR. JAUREGUI: Yes.

10 BY MR. JAUREGUI:

11 Q. The environment that surrounds them.

12 A. Yes. That one I deal with.

13 Q. Does it matter to you whether people are
14 aware of the danger? I mean, they cannot perceive
15 a danger if they're not aware of it. Do you agree
16 with that?

17 A. No, I --

18 MR. WILLIAMS: I'm going to object.
19 That's vague and ambiguous.

20 Go ahead

21 THE WITNESS: I don't -- I'm having
22 difficult following your --

23 BY MR. JAUREGUI:

24 Q. All right. Let me put it in context of
25 this case. The Padillas have testified in this

1 case they were not aware of the risk of
2 strangulation by the window loop cords in the
3 vertical blind in this case. All right. Now,
4 that has to do with perception; correct? They
5 were not aware of a danger that existed in the
6 house?

7 A. I understand that to be their testimony.
8 Yes.

9 Q. All right. How -- strike that. Does that
10 make any difference in your analysis as to whether
11 or not someone perceives a danger that is open
12 versus a danger that is hidden?

13 MR. WILLIAMS: Objection. Vague
14 and ambiguous still.

15 THE WITNESS: I -- as I'm
16 understanding your question, I don't
17 believe so. I would say that the -- a
18 person's awareness of -- of a danger is
19 potentially not the same thing as whether
20 or not that underlying danger is, in your
21 terms, open and obvious or hidden. There
22 are other factors that determine whether
23 or not someone might become aware of it.

24 BY MR. JAUREGUI:

25 Q. Such as?

1 A. Such as the -- the attention they give to
2 relevant issues or the efforts they -- they make
3 in addressing or becoming aware or perceiving
4 either the world around them or the information
5 that's available at the time that we're talking
6 about.

7 Q. All right. We will deal with those issues
8 in a little bit. What is the next document that
9 you have in your materials?

10 A. The next article is Ayres, et al, 1989.

11 MR. JAUREGUI: We will call the
12 Ayres '89 article Exhibit No. 33.

13 -----

14 (1989 Ayres et al article marked
15 Exhibit No. 33.)

16 -----

17 BY MR. JAUREGUI:

18 Q. What is the title of that article?

19 A. What Is A Warning And When Will It Work.

20 Q. Did that article deal with any specific
21 product?

22 A. Not specific products.

23 Q. Where was that article published?

24 A. I believe that the article was published
25 in -- get the specific here -- proceedings of the

1 Human Factors Society 33rd Annual Meeting.

2 Q. What are the conclusions of that article?

3 A. The article presents and summarizes
4 information as to what warnings are generally
5 accepted to contain and the role that warnings can
6 serve in altering behaviors and when a warning
7 may, in fact, alter behaviors.

8 Q. Do you know the author?

9 A. They're a variety of authors.

10 Q. Ayres, do you know who Ayres is?

11 A. Yes, I do.

12 Q. What's the first name?

13 A. Thomas.

14 Q. How do you know Mr. Ayres?

15 A. I have met him at conferences.

16 Q. Do you know him in any other capacity?

17 A. In a professional setting as conferences
18 and a colleague.

19 Q. Other than -- he's a colleague of yours?

20 A. Well, that we are both human factor
21 scientists that research warnings and related
22 issues.

23 Q. Do you know if Mr. Ayres has done any
24 specific warnings as they relate to window
25 coverings?

1 A. I do not know.

2 Q. Do you know if the subject of his article
3 as he relates to warnings deals with products that
4 are considered to be unreasonably dangerous to
5 children?

6 A. Within this article?

7 Q. Yes.

8 A. I don't believe that -- that the authors
9 addressed specific consumer products that would be
10 considered to be reasonably dangerous to children.

11 Q. We did a Google on Mr. Ayres and it
12 revealed that he's affiliated with Exponent
13 Failure Analysis. Did you know that?

14 A. He was. He's a previous employee.

15 Q. When did he leave?

16 A. He left before I started. I'm not sure
17 what year.

18 Q. When did you start at Exponent?

19 A. I started in 2005.

20 Q. Do you know why Mr. Ayres left Exponent?

21 A. I do not.

22 Q. Have you seen Mr. Ayres after 2005?

23 A. As I indicated, I've seen him at
24 conferences. That's why I'm familiar with him.

25 Q. After 2005?

1 A. Yes.

2 Q. Did you ever ask him why he left Exponent?

3 A. No, I did not.

4 Q. Did he ever tell you?

5 A. No.

6 Q. How is the Ayres article relevant to your
7 opinions in this case?

8 A. Again, this is a basis for my opinions as
9 they relate to expected response to warning
10 information and human response to behaviors
11 with -- human behavior with response to safety
12 information.

13 Q. Have you used this publication in your
14 other opinions in the past?

15 A. I have.

16 Q. These are in cases that you've testified
17 in court?

18 A. Yes.

19 MR. JAUREGUI: We'll go through
20 those cases in a minute. Let's take a one
21 minute, 30 second break here.

22 -----

23 (Off the record at 12:07 p.m.)

24 -----

25 (On the record at 12:11 p.m.)

1 BY MR. JAUREGUI:

2 Q. What is the next set of documents you have
3 in your materials?

4 A. Article by Ayres, et al, 1998.

5 MR. JAUREGUI: We'll mark the '98
6 Ayres article Exhibit No. 34.

7 -----

8 (1998 Ayres, et al article marked
9 Exhibit No. 34.)

10 -----

11 BY MR. JAUREGUI:

12 Q. Is this the same author as we discussed
13 before?

14 A. Yes.

15 Q. What is the subject matter of this
16 article?

17 A. The effectiveness of warning labels and
18 signs.

19 Q. Warning labels and signs?

20 A. And signs.

21 Q. Do you know whether that article dealt
22 with any specific product?

23 A. I believe that this is a review of a
24 number of articles. Some of them dealt with
25 specific consumer products.

1 Q. Do you know whether any of the articles
2 that are incorporated in the discussion of the '98
3 articles dealt with window coverings, warnings?

4 A. It doesn't appear that any of them did.

5 Q. What's the general gist of that article?

6 A. It's detailing difference in methodologies
7 and how some of the signs of behavior compliance
8 has been -- has been measured up to the date of
9 this article.

10 Q. When you say behavior compliance, what do
11 you mean by that?

12 A. Whether people alter their behaviors based
13 on safety information provided along with the
14 product or the environment.

15 Q. What significance, if any, does this
16 article have to your opinions in this case?

17 A. Again, this is part of the basis on -- for
18 my opinions as to the expected behavioral response
19 to warnings.

20 Q. And in this case, your opinion, the
21 warnings would not have made a difference in the
22 outcome of this case; correct? Is that the --

23 A. One of the --

24 Q. Is that the bottom line?

25 A. Summary of one of my opinions is what I

1 read into the record before that appears in my
2 report.

3 Q. What's the next set of documents in your
4 materials?

5 A. Doris & Purswell, 1977.

6 Q. Is that an article or some kind of
7 publication?

8 A. Yes. It's an article.

9 MR. JAUREGUI: We will label the
10 Doris & Purswell '77 article as Exhibit
11 No. 35.

12 -----
13 (1977 Doris & Purswell article
14 marked Exhibit No. 35.)

15 -----

16 BY MR. JAUREGUI:

17 Q. Would you essentially tell me what is the
18 subject matter of that article?

19 A. Behavioral Response To Warnings.

20 Q. Do you know what the article concludes?

21 A. Well, it talks about studies and
22 experiments run with warnings and reports on
23 whether or not and the proportion of people that
24 would or that detected and followed the warnings.

25 Q. How is that article relevant to your

1 opinions in this case?

2 A. Again, this is part of the basis of my
3 opinions on Behavioral Response To Warnings.

4 Q. Did the '77 article deal with the issue of
5 window covering cords?

6 A. It did not deal with window covering
7 cords.

8 Q. Do you know whether that article dealt
9 with any products considered to be unreasonably
10 dangerous to children?

11 A. I don't -- it's difficult to answer
12 whether it would be considered unreasonably
13 dangerous to children. One of them was a tool, a
14 hammer, so I don't know if you find many people
15 saying that that was a product that children might
16 have, children.

17 Q. What's the next set of documents you have?

18 A. Otsubo, 1988.

19 Q. Can you spell that?

20 A. O-T-S-U-B as in boy, O.

21 Q. Did you say 1988?

22 A. Yes.

23 MR. JAUREGUI: We'll label the
24 Otsubo '88 article as Exhibit No. 38.

25 MR. WILLIAMS: Forty-two? Did you

1 say 38?

2 MR. JAREGUI: Thirty-eight.

3 THE WITNESS: Thirty-six.

4 MR. JAUREGUI: Thirty-six. I'm
5 sorry.

6 MR. WILLIAMS: I'm sorry. I
7 started missing numbers about three ago.

8 -----

9 (1988 Otsubo article marked Exhibit
10 No. 36 for identification.)

11 -----

12 BY MR. JAUREGUI:

13 Q. What is the subject of -- the subject
14 matter of the article in Exhibit 36?

15 A. Again, it would be similar the others,
16 which is the behavioral response to safety and
17 warning information.

18 Q. What were the conclusions of that article?

19 A. The -- that the effectiveness of warnings
20 varied with the manipulated variables which were
21 the levels of product danger and the warning
22 provided.

23 Q. Did that article indicate whether the
24 higher the danger posed by the product the more
25 attention people paid to it?

1 A. Let me review so I don't misstate the --

2 Q. Okay.

3 A. The article speaks to this and with
4 reference to the people's familiarity with the
5 product with the sense that the more familiar a
6 person is with the product, the less likely they
7 are to perceive and attend to the warnings that
8 may accompany the product.

9 Q. Do you know whether or not that article
10 dealt with the issue of window coverings?

11 A. It did not.

12 Q. Do you know whether or not that article
13 dealt with any products that pose an unreasonable
14 risk of injury to young children?

15 A. Well, again, this was done with respect to
16 circular saws and jigsaws.

17 Q. So it's not a product that children would
18 be expected to come in contact with?

19 A. No. This article is not a product
20 intended for child interaction.

21 Q. What is the significance, if any, of that
22 article to your findings in this case?

23 A. Again, this is part of the basis for my
24 expectations as to behaviors and response to
25 warnings and safety information provided.

1 Q. What's the next set of documents you have
2 there?

3 A. Zeitlin.

4 Q. Is that an article.

5 A. It's an article.

6 MR. JAUREGUI: We'll label the
7 Zeitlin article as Exhibit 37.

8 -----

9 (1994 Zeitkin article marked
10 Exhibit No. 37 for identification.)

11 -----

12 BY MR. JAUREGUI:

13 Q. What is the subject matter addressed in
14 that article, in Exhibit 37?

15 A. This is the same, again, behavioral
16 response to safety information.

17 Q. What was the date of that publication?

18 A. 1994.

19 Q. Do you know the setting where that study
20 was -- do you know whether there was a study
21 conducted?

22 A. There was.

23 Q. Do you know the setting of the study?

24 A. It was a laboratory experiment.

25 Q. Do you know what products were tested?

1 A. An electric chain saw.

2 Q. You'll agree with me an electric chain saw
3 has nothing to do with or no similarity to window
4 cords; correct?

5 MR. WILLIAMS: I'll object. Vague.

6 MR. JAUREGUI: Withdraw that.

7 BY MR. JAUREGUI:

8 Q. You would agree with me an electric chain
9 saw has no similarity with a vertical blind loop
10 cord such as the one we have in this case?

11 MR. WILLIAMS: Go ahead.

12 THE WITNESS: They are different
13 consumer products.

14 BY MR. JAUREGUI:

15 Q. Generally you would not expect a child to
16 come into contact with an electric chain saw, is
17 that --

18 A. I think that an electric chain saw is not
19 intended for a child's use.

20 Q. Well, what was the general conclusions of
21 that article?

22 A. Again, that the -- the user's familiarity
23 and confidence with a product affects the
24 attention given to and the compliance with
25 warnings.

1 Q. Did you draw any conclusions from that
2 article to support the opinions in this case?

3 A. Yes. This is -- again, this is part of
4 the basis for opinions with regard to
5 behavioral -- expectation as to behavioral effects
6 of warnings and safety information.

7 Q. What's the next set of documents in your
8 materials?

9 A. Ayres, et al, 1990.

10 MR. JAUREGUI: That will be Exhibit
11 No. 38, Ayres et al, '90.

12 -----

13 (1990 Ayres et al article marked
14 Exhibit No. 38 for identification.)

15 -----

16 BY MR. JAUREGUI:

17 Q. Can you tell us what the subject matter of
18 that publication is?

19 A. This publication investigates subjective
20 impressions and ratings, the effectiveness of
21 warnings compared to actual behavioral compliance.

22 Q. What do you understand the subjective
23 impressions mean?

24 A. Whether or not people feel that they would
25 comply with a warning or whether others would

1 comply with a warning as compared to whether or
2 not the underlying behavior is actually changed.

3 Q. So, essentially, some people would say,
4 they would comply, they would follow the warnings,
5 but the studies such as these shows otherwise?

6 A. Well, this is a study that compares when
7 people are directed to a warning and asks whether
8 or not they think they would comply with it or
9 whether or not they think people would comply with
10 it; that they offer subjective evaluations that,
11 yes, they or others would comply with that warning
12 at high rates and comparatively when put into a
13 setting where people are given the product, you
14 see very different and much lower rates of
15 compliance with the actual warning.

16 Q. Do you know whether or not there were any
17 specific warnings from specific products that were
18 reviewed or analyzed in that article?

19 A. Yes, there were.

20 Q. What were those products?

21 A. For example, one of them was a hammer
22 warning.

23 Q. Any other products?

24 A. Yes. I believe that there were also other
25 products. Glues.

1 Q. I'm sorry?

2 A. Glue.

3 Q. Glue?

4 A. Glue, I believe.

5 Q. Okay.

6 A. And other signage.

7 Q. Do you know whether any of those products
8 posed an unreasonable risk of injury to young
9 children?

10 A. Again, I think that some of these products
11 would have recognized risk to children.
12 Characterized unreasonable or not, I'm not sure
13 what you're -- you're --

14 Q. Do you know whether any of the products
15 included window coverings?

16 A. No. I don't believe any of the products
17 were window coverings.

18 Q. Do you know whether or not any of the
19 products included some type of cord or wires?

20 A. I don't believe any of them were.

21 Q. All right. For what purpose, if any, did
22 you rely on this study?

23 A. Again, I relied on this study as a basis
24 for my opinions related to behavioral response and
25 statements as to whether or not one would have

1 complied with the warning had it been present to
2 assess the validity of such a statement.

3 Q. And your conclusions are incorporated in
4 your opinions, sir?

5 A. Yes, they are.

6 Q. All right, what do you have, the next set
7 of documents, sir?

8 A. Shaver et al, 2006.

9 MR. JAUREGUI: That will be Exhibit
10 No. 39. Off the record.

11 -----

12 (Off the record at 12:26 p.m.)

13 -----

14 (On the record at 12:26 p.m.)

15 -----

16 (2006 Shaver, et al article marked
17 Exhibit No. 39.)

18 -----

19 BY MR. JAUREGUI:

20 Q. What is the subject matter of the
21 Shaver, et al article?

22 A. This is a very similar article and in much
23 effects an extension of the previous article we
24 spoke of.

25 Q. And did that article deal with any

1 specific warnings from the specific type product?

2 A. It -- it did indeed deal with specific
3 products.

4 Q. What were the products?

5 A. One -- the product which they considered
6 here was a cabinet.

7 Q. Okay. Is that it?

8 A. They also reviewed other warnings, papers.

9 Q. But the specific product was a cabinet?

10 A. Yes. A file cabinet.

11 Q. Do you know what the conclusions of that
12 article were?

13 A. Similar to the previous article,
14 differences between subjective ratings of
15 compliance and the actual underlying behavioral
16 effectiveness and also related to different styles
17 of warning formats.

18 Q. Did you rely on that study for your
19 opinions in this case?

20 A. I used this as a basis for my opinions.

21 Q. Do you know if the danger or risk of
22 injury posed to a young child by a cabinet is the
23 same as the risk of injury of strangulation posed
24 to a young child by a window covering cord?

25 MR. WILLIAMS: Objection. Vague

1 and ambiguous.

2 Go ahead.

3 THE WITNESS: I don't think I
4 can -- without more definition of terms in
5 that question I don't think I can answer
6 that.

7 BY MR. JAUREGUI:

8 Q. What terms would you like me to define?

9 A. Can you read back the question?

10 -----

11 (The court reporter read back the
12 last question.)

13 -----

14 BY MR. JAUREGUI:

15 Q. I understand your question. Let's just
16 say whether the severity of an injury to a young
17 child by a cabinet is the same as the severity of
18 the injury posed to a young child from a window
19 covering cord.

20 MR. WILLIAMS: Same objection.

21 THE WITNESS: If we're talking
22 about the severity of injury that a child
23 might experience through an interaction
24 with the window cord as compared to a file
25 cabinet, yes, it could be -- potentially

1 be the same severity.

2 BY MR. JAUREGUI:

3 Q. Do you have any data to indicate children
4 have died as a result of their interaction with
5 a cabinet such as the one discussed in that
6 study?

7 A. I do not have with me any data about
8 the -- about injuries to young children with file
9 cabinets per se. But the way that you phrased
10 your question as to should a child be interacting,
11 the mechanism for injury here is -- that they're
12 talking about is a tip-over and a fall onto a
13 person, and that is an injury mode that is quite
14 prevalent in children with items falling on
15 children.

16 Q. Do you know whether file cabinets have any
17 types of cords that would pose risk of
18 strangulation to young children?

19 A. I don't believe that file cabinets would
20 have cords.

21 Q. All right. Next set of documents?

22 A. Frantz.

23 Q. France?

24 A. Frantz, F-R-A-N-T-Z, et al, 2005.

25 MR. JAUREGUI: We will label that

1 article as Exhibit No. 40.

2 -----

3 (2005 Frantz, et al article marked
4 Exhibit No. 40 for identification.)

5 -----

6 BY MR. JAUREGUI:

7 Q. What is the subject matter of the Frantz
8 article?

9 A. Again, this is an article -- excuse me --
10 very much in the same vein as the previous two,
11 about predicted versus actual response to
12 warnings, subjective ratings versus actual
13 response. And, again, looking at the idea of
14 adding or taking away specific formatting features
15 to the warnings.

16 Q. Do you know whether that was a study
17 conducted in that article?

18 A. It's a review and re-analysis of an
19 extension of existing published studies.

20 Q. Do you know whether any of the studies or
21 articles that were reviewed within that article
22 included injuries from window covering cords?

23 A. I don't believe they were.

24 Q. For what purpose, then, did you rely on
25 the Frantz article for purposes of your opinions

1 in this case?

2 A. Again, as a basis for my opinions
3 regarding behavioral response to safety
4 information and warnings.

5 Q. Do you know whether any of the items in
6 the Frantz study dealt with any products that are
7 considered to be unreasonably dangerous to
8 children?

9 A. Again, I just would say that, you know,
10 whether or not the product was considered to be
11 unreasonably dangerous to children, I think that
12 it reviews the file cabinet that we talked about,
13 also construction hazard signs, things that would
14 be recognized as hazards to children.

15 Q. What's the next of the records you have
16 there in your materials?

17 A. Smith-Jackson & Durak, 2000.

18 MR. JAUREGUI: We will label this
19 Smith-Jackson & Durak article, 2000,
20 Exhibit No. 41.

21 -----

22 (2000 Smith-Jackson & Durak article
23 marked Exhibit No. 41.)

24 -----

25 BY MR. JAUREGUI:

1 Q. Tell me what is the subject matter of that
2 article?

3 A. This is an experiment that the -- that was
4 run to investigate the detection or the noticing,
5 the reading and compliance with a posted sign or
6 posted warnings, and then the effect that
7 formatting changes have on those.

8 Q. Was there a study done in connection with
9 that article?

10 A. Yes.

11 Q. Was that a controlled study done in a lab?

12 A. It was a -- it was an experimental setup.
13 It was designed to be -- to simulate a chemistry
14 lab. So, yes, it was a laboratory experiment.

15 Q. Who was the audience that was exposed to
16 that experiment?

17 A. They were students at Virginia Tech.

18 Q. Pretty smart folks; right?

19 A. Uh --

20 Q. Say yes, otherwise, you'll get in trouble
21 with that. Were they, like, chemistry students
22 or --

23 A. They're described as participants from
24 introduction to psychology course and other
25 students.

1 Q. All right. Well, what was the general
2 conclusion of that article?

3 A. That none of the subjects in the
4 experiment looked at any of the warnings signs
5 regardless of the warning sign that was posted.

6 Q. Do you know what products that they were
7 looking at?

8 A. In this experiment it was what they termed
9 a chemical mixing task. They had to mix a series
10 of chemicals, as I explained, set up to be a
11 chemistry lab.

12 Q. How are the findings of that study
13 relevant to your conclusions in this case?

14 A. Again, these are part of the basis for my
15 expectations as to the behavioral response to
16 safety and warning information.

17 Q. All right. What's the next set of
18 documents you have?

19 A. The final document --

20 Q. All right.

21 A. -- is --

22 Q. Lunch.

23 A. -- Poison Prevention Packaging Act Of 1970
24 Regulations. And this is --

25 Q. 1970 regulations?

1 A. Well, it's the -- the Poison Prevention
2 Packaging Act was instituted in 1970.

3 Q. Okay.

4 A. And this is the January 2010 edition of
5 the Act.

6 -----
7 (January 2010 edition of Poison
8 Prevention Packaging Act of 1970 marked
9 Exhibit No. 42.)

10 -----

11 BY MR. JAUREGUI:

12 Q. I know it's kind of self-explanatory, but
13 tell me what was the general subject matter of
14 that article?

15 A. Well, the Poison Prevention Packaging --

16 Q. Or the act.

17 A. The Act is -- outlines regulations on
18 packaging that must be used to prevent childhood
19 poisonings, and it details the intent and some of
20 the designed considerations of such packaging.

21 Q. What were the findings or recommendations
22 from that article?

23 A. Well, that certain products require
24 special packaging. That the packaging needs to be
25 designed such that it limits access to children of

1 a certain age, and is still accessible and usable
2 by adults over a certain age. There are testing
3 procedures that are described therein and there
4 are provisions included to allow for packaging
5 that does not meet these requirements for these
6 specific types of product.

7 Q. What, if any, of its findings in the
8 article or package that you have there in
9 Exhibit 42 did you rely upon for your opinions in
10 this case?

11 A. Again, I am offering this as a basis for
12 my opinions as it relates to the range of designs
13 in offering options as to design to allow
14 accessibility to different populations with
15 different limitations.

16 Q. That study specifically deals only with
17 medicines?

18 A. Well --

19 Q. Or poisons?

20 A. The regulation deals with more than just
21 medications.

22 Q. But generally what's the field of --

23 A. They -- they list the -- they list the
24 actual products that it did -- is meant to
25 address.

1 Q. Can we just generally say that it
2 addresses the subject of medicine and any other
3 chemicals or compounds?

4 A. Chemicals and compounds.

5 Q. That presents a risk upon young children?

6 A. That would be -- let me just make --

7 Q. Just generalizing. Go ahead. The longer
8 you take, the longer you have to wait for lunch.

9 A. I just didn't want to misstate what is
10 there. A listing of 32 specific things that
11 require the packaging with some sub-bullets
12 underneath them that span from Pages 810 to 814.
13 They're all under the heading of 1700.14,
14 Substances Requiring Special Packaging.

15 Q. None of those items have anything to do
16 with the window coverings; correct? They are an
17 entirely separate category of products?

18 A. These -- window coverings are not on this
19 list.

20 MR. JAUREGUI: All right. We're
21 going to break for lunch.

22 -----

23 (Off the record at 12:40 p.m.)

24 -----

25 MR. JAUREGUI: Back on the record.

1 (On the record at 1:18 p.m.)

2 -----

3 BY MR. JAUREGUI:

4 Q. Dr. Sala, before we broke we had
5 finished marking the two-ring binders that are in
6 front of you containing the materials and
7 information that you either relied upon or used in
8 preparing your report in this case; is that
9 correct?

10 A. Yes.

11 Q. Does that include the entire contents of
12 your file in this case?

13 A. Well, there were -- there were documents
14 that have been forwarded to me that I believe are
15 part of the production of documents that are not
16 included in here.

17 Q. Okay. Can you tell me what those
18 documents are?

19 A. Those would largely be additional legal
20 documents or documents that came through the
21 discovery process. There's a list of materials
22 that I've been -- received and reviewed in the
23 back of my report.

24 Q. All right. Just tell me what page you're
25 on.

1 A. Page 16.

2 Q. All right. Are there any documents on
3 Page 16 which were not included in the documents
4 that we just finished reviewing in Exhibits 1
5 through 42?

6 A. Yes, there are.

7 Q. Can you identify those documents?

8 A. The Complaint At Law.

9 Q. Okay.

10 A. Defendant Hunter Douglas Window Coverings,
11 Incorporated, Rule 26(a)(1) initial disclosures.

12 Q. Anything else?

13 A. Plaintiff's Rule 26(a)(2) disclosures.
14 Photos taken by Oak Forrest Police Department of
15 Max Padilla. Epidemiological Investigation Report
16 and Supplemental Documents, 1982 to 2005.

17 Q. Okay.

18 A. Rose Ray's expert report. Possibly some
19 of the exhibits. I'm not sure to what extent all
20 the exhibits that have been reproduced in these
21 binders. And affidavit of Brenda Davis.
22 Everything else should be reflected in the report,
23 the contents.

24 Q. The Exhibits 1 through 7 marked in
25 depositions 11/19 and 11/20, do you know what

1 those deposition are?

2 A. Not off the top of my head.

3 Q. So those are -- you are referencing the
4 dates when those depositions were taken and the
5 exhibits that were attached to those deposition
6 transcripts?

7 A. Yes.

8 MR. WILLIAMS: Probably that's your
9 client's and the first respondents that we
10 took in those two days in Chicago.

11 BY MR. JAUREGUI:

12 Q. All right. And the affidavit of Brenda
13 Davis?

14 A. Yes.

15 Q. These are all -- all of the documents that
16 you just identified for me, these are documents
17 that you used upon your review in preparation for
18 your report but they are not in the list of
19 materials that we just reviewed?

20 A. They're not included in -- in these
21 binders.

22 Q. All right. Exhibits 1 through 14.

23 A. Some of the -- some of what I have here as
24 photographs may be from that exhibit list. I see
25 exhibit markings on them.

1 Q. Okay. Does that constitute the entire
2 contents of your file in this case?

3 A. Plus the binders that I have here.

4 Q. Yes. All right. When were you hired in
5 this case?

6 A. I actually -- I can't remember off the --
7 I can't recall off the top of my head.

8 Q. It's just a point of reference when you
9 prepare your report. Your report has a date of
10 June 30, 2011, as the date of completion. Is that
11 accurate?

12 A. Yes.

13 Q. Using that as a date of reference, does
14 that remind you of when you were first retained in
15 this case?

16 A. No, it does.

17 Q. Do you have a letter of engagement?

18 A. I likely do have a letter of engagement.

19 Q. Is there a reason why you didn't bring
20 that with you today?

21 A. I didn't receive any -- any request for
22 documents to be provided.

23 Q. Do you have any communications between you
24 and Mr. Williams regarding this case?

25 A. I don't believe I have any hard copy

1 communications.

2 Q. Do you have e-mails regarding
3 communication between you and Mr. Williams in this
4 case?

5 A. I -- there might be some in scheduling of
6 the deposition or -- nothing of substance, though.

7 Q. Earlier you told me that you had requested
8 certain materials from Hunter Douglas for your
9 report in this case. Did you make that request in
10 writing or orally?

11 A. Again, I think that's a
12 mischaracterization. I tried to explain. It
13 wasn't a request for production of documents.
14 These were conversations that I likely had with
15 Mr. Williams as to the types of information that I
16 would be trying to incorporate herein, and it was
17 more a discussion than it was a request for any
18 sort of production.

19 Q. Are there any documents at all documenting
20 any of your correspondence or conversations with
21 Mr. Williams regarding any requests for materials
22 that you would have need or that you ask that it
23 be provided to you by Hunter Douglas?

24 A. I have no memory of any such documents.

25 Q. How much are you charging for your fees?

1 A. Exponent bills my time at 275 an hour.

2 Q. What's the percentage that goes to you?

3 A. I receive an annual salary.

4 Q. What's your annual salary at Exponent?

5 A. I'm sorry. I'm not at liberty to disclose
6 that on the record.

7 Q. How much -- do you work exclusively for
8 Exponent?

9 A. I do.

10 Q. When did you start working for Exponent
11 exclusively?

12 A. 2005.

13 Q. Prior to 2005 where were you employed?

14 A. I was a -- before Exponent I was a
15 post-doctoral fellow at Stanford University.

16 Q. What was your field of study there?

17 A. Cognitive neuroscience.

18 Q. And did you obtain your degree?

19 A. Well, that was post-doctoral studies.

20 Q. Okay.

21 A. So that was following the attainment of my
22 Ph.D.

23 Q. Where did you obtain -- where did you
24 obtain your doctoral degree?

25 A. Johns Hopkins University.

1 Q. In what area?

2 A. Cognitive neuroscience, experimental
3 psychology. The department was the Department Of
4 Psychological And Brain Sciences.

5 Q. Do you know if there is a specific field
6 of study known as human factors?

7 A. Human factors is largely an umbrella sort
8 of terminology for a collection of disciplines.
9 There are, I believe, some universities that may
10 offer a -- or that begun to offer a human factors
11 degree, but largely it is a collection of studies
12 related to human performance.

13 Q. What makes you an expert on human factors?

14 A. I would say my education, training and
15 experience.

16 Q. What other employment prior to your
17 employment with Exponent did you have?

18 A. There was the post-doctoral studies and
19 fellowship at Stanford, my graduate career at
20 Johns Hopkins, and prior to that there was a --
21 between undergraduate and graduate school there
22 was a one year employment at a group home for
23 adolescents.

24 Q. A group of --

25 A. A group home for adolescents.

1 Q. For how long did you work there?

2 A. One year.

3 Q. What did you do there?

4 A. I was a supervising counselor.

5 Q. When did you start working as an expert on
6 human factor analysis?

7 A. In 2005 when I joined Exponent.

8 Q. How did you become to be hired by
9 Exponent?

10 A. I applied -- well, I first came for an
11 informational interview to learn what the company
12 was like and about. I then get formal
13 presentation and interview and was hired on.

14 Q. Did you talk to anyone other than
15 Mr. Williams in preparing your report for this
16 case?

17 A. Yes.

18 Q. Who else did you talk to? Let me just
19 break it down. Did you talk to anyone from Hunter
20 Douglas?

21 A. I spoke with Mr. Jankoski.

22 Q. When did you speak with Mr. Jankoski?

23 A. It was prior to the production of my
24 report, but I can't remember the date.

25 Q. Was that a telephonic conversation?

1 A. Yes.

2 Q. Or an in-person conversation?

3 A. Telephonic.

4 Q. Telephonic?

5 A. Yes.

6 Q. What was the subject of the that
7 conversation?

8 A. Vertical blinds and the application of
9 vertical blinds in the home.

10 Q. Who initiated the call?

11 A. I believe it was a call-in number.

12 Q. Did he ask you to call him or did you call
13 him or -- I mean, who set up the call?

14 A. Mr. Williams' office set up the call.

15 Q. Why was that call set up between you and
16 Mr. Jankoski?

17 A. So that I can -- the call was set up so
18 that I could hear Mr. Jankoski describe the
19 application of vertical blinds and the environment
20 and his experience with where and how they were
21 used in commercial -- consumer setting.

22 Q. Why was that information relevant to your
23 report in this case?

24 A. Well, the -- the -- where in the
25 environment for use is something that I

1 incorporate into my report. And in speaking with
2 Mr. Jankoski, I wanted to make sure that my
3 understanding of the product was consistent with
4 the experiences of Hunter Douglas.

5 Q. What did Mr. Jankoski tell you about the
6 place and the environment in which vertical blinds
7 were used?

8 A. Well, he confirmed that the -- that
9 vertical blinds are most often in settings like
10 over patio doors or tall and long windows, that
11 parts of their design are uniquely appropriate for
12 such settings.

13 Q. Did you ask Mr. Jankoski to provide you
14 any data related to his understanding of the use
15 and location of vertical blinds?

16 A. No.

17 Q. Did Mr. Jankoski tell you whether or not
18 Hunter Douglas had any data supporting the
19 statements -- or the representations he was making
20 to you regarding the use and location of vertical
21 blinds?

22 A. I am not positive what sorts of data
23 Mr. Jankoski would be able to provide. Specific
24 to that I think that -- I'm not familiar enough
25 with Hunter Douglas' internal workings to suggest

1 what they might be able to provide.

2 Q. Did you ask him to provide you with any
3 data?

4 A. I did not ask for any specific data. I
5 asked what he could inform me about this, and
6 after then we had a discussion about the -- the --
7 about these topics.

8 Q. And the use and location of vertical
9 blinds, is that something that you consider
10 important to the opinions in this case?

11 A. Well, I think that it's a topic that I
12 wrote about in my report, and I think it is part
13 of the product and how I consider it in the -- in
14 its use and the person or the expected
15 interactions consumers would have with it.

16 Q. Did Mr. Jankoski represent to you or did
17 he give you any percentages as to the number of
18 vertical blinds that were used in certain
19 locations of the house versus other locations,
20 i.e., in common areas where you have the sliding
21 doors as opposed to children's bedrooms?

22 A. We talked about that topic, and it seemed
23 as if there wasn't any way to quantify something
24 like that based on what he had available to him.

25 Q. All right. Is it your understanding, if

1 you have an understanding, of whether Mr. Jankoski
2 was providing that information to you from some
3 document that he was looking at or was it just
4 something that -- what his impression was from his
5 exposure or from his work in the window covering
6 industry?

7 A. I don't know what he particularly had in
8 front of him or if he -- if he had documents that
9 he was referring to. This was a conversation that
10 we had over the phone.

11 Q. Other than the representations that were
12 made to you by Mr. Jankoski regarding location and
13 use of the vertical blinds, did you have any other
14 information that you relied upon or used for -- in
15 your report?

16 A. Excuse me. As to the application of the
17 vertical blinds, I have the independent work that
18 I undertook to -- to observe vertical blinds in
19 use and in settings as well as the work that I
20 performed to try and ascertain the depiction of
21 and description of vertical blinds currently
22 provided through the internet and manufacturers
23 and suppliers.

24 Q. And are you talking about the search that
25 you did over the internet that we discussed

1 earlier about the materials that are included in
2 your --

3 A. Yes.

4 Q. -- in your binder?

5 A. Yes. There's examples of depictions and
6 characterizations of vertical blinds.

7 Q. Okay. So from the work that you did on
8 the internet, how long did that search take you to
9 do?

10 A. I don't have a specific recollection of
11 the time I spent on that search.

12 Q. Did it take you more than an hour?

13 A. It likely --

14 MR. WILLIAMS: Did we lose you?

15 MR. WEISS: I think I might have
16 lost you.

17 MR. WILLIAMS: Okay. Good Because
18 we didn't touch anything. How long ago
19 did you drop, Mike?

20 MR. WEISS: About 30 seconds.

21 MR. WILLIAMS: Okay. Why don't you
22 see if you have any questions when Arturo
23 picks back up. I suspect you won't.

24 MR. WEISS: Thank you.

25 BY MR. JAUREGUI:

1 Q. So the question pending is, I asked you --
2 you said that you had done some independent work
3 related to the usage of vertical blinds; correct?

4 A. Yes.

5 Q. And I asked you if that work was related
6 to the internet search that you had done as
7 reflected by the documents that were in one of the
8 exhibits in your -- one of the three-ring binders;
9 correct?

10 A. Yes.

11 Q. And I asked you how long did that search
12 take you, and you told me that you were not able
13 to --

14 A. I don't remember the specific time frame.

15 Q. Did you -- how do you bill Mr. Williams
16 here?

17 A. It will be, I believe, a monthly invoice.

18 Q. All right. And in that monthly invoice
19 did you itemize how you spend your time and the
20 work that you are doing in this case?

21 A. There is an itemization.

22 Q. Okay. So if I go back and look at that
23 itemization for the manner in which you had spent
24 the time in this case, that will give us an idea
25 of the amount of time that you spent during the

1 internet search regarding the use of vertical
2 blinds?

3 A. To the degree of specificity that it's
4 itemized in the bill.

5 Q. All right. So tell me what is it that you
6 learned from that independent report that you did
7 regarding the usage of vertical blinds?

8 A. Again, what I was finding in my review of
9 vertical blinds, their documentation, their
10 description, their depiction, was that these are
11 oftentimes over long banks of windows or patio
12 doors. They're often described with reference to
13 patio doors. And, again, this was confirmed by
14 the conversation I had with Mr. Jankoski, the
15 sizes of blinds typically when sold in box stores
16 or home improvement stores are typically very
17 long, seven feet or so tall. That would be
18 appropriate for something like a patio door or a
19 sliding glass door.

20 Q. Is it your understanding that vertical
21 blinds are supposed to be exclusively used for
22 either tall windows or patio doors?

23 A. That is not what I said.

24 Q. Okay. Do you know what kind of
25 information or data Hunter Douglas keeps when a

1 consumer orders a product, a Hunter Douglas
2 product?

3 A. I do not have that sort of information. I
4 don't know. I wouldn't be the appropriate person
5 to ask as to what level of communication exists
6 between the consumer and Hunter Douglas directly.

7 Q. Do you know whether at the time when a
8 consumer orders a vertical blind, the consumer
9 states whether that window blind is going to be
10 for a bedroom in a child's room versus that
11 vertical blind being designated for use in a
12 common area such as a family room?

13 A. Again, I wouldn't be the appropriate
14 person to ask about communications between the
15 consumers and Hunter Douglas. At least part of my
16 understanding is that there is often a distributor
17 that works between the consumer and manufacturer.
18 I -- that's not my area of expertise.

19 Q. Do you know what type of information, if
20 any -- strike that. Do you know what is the role
21 of the distributor in relation to the transaction
22 that is made in this case for a vertical blind?
23 Do you know what role the distributor played, if
24 any, in this case?

25 MR. WILLIAMS: In general?

1 MR. JAUREGUI: In this case.

2 MR. WILLIAMS: Okay. Object.

3 THE WITNESS: In --in this case I
4 have seen reference to an entity, but I
5 don't have any specific knowledge or
6 detailed knowledge about that company or
7 distributor.

8 BY MR. JAUREGUI:

9 Q. What is the reference or entity that
10 you're talking about?

11 A. I believe it was American Blinds And
12 Wallpaper Company.

13 Q. And is it your understanding that the
14 distributor of this Hunter Douglas product was
15 American Blinds And Wallpaper?

16 A. Again, I wouldn't -- I don't even want to
17 characterize they were the distributor. It seems,
18 my understanding, that they had some transactional
19 role involved with Mrs. Davis' purchase or
20 Mrs. Roberts' purchase, but it's -- I don't want
21 to conjecture as to what their role was
22 specifically.

23 Q. And how did you come across that
24 information?

25 A. I believe that this was from the

1 deposition testimony provided.

2 Q. As you sit here today do you have -- do
3 you know one way or the other whether American
4 Blinds And Wallpaper had anything to do in this
5 transaction?

6 A. Not specifically. I would have no more
7 information than other people in this case that
8 would be more appropriate to answer questions as
9 to that.

10 Q. So other than the information that
11 Mr. Jankoski gave you about the location and usage
12 of vertical blinds and your very own independent
13 search that you did on the internet, do you have
14 any other sources of information that you used in
15 your report that told you how or where people used
16 vertical blinds in their homes?

17 A. Well, it included the internet, but also I
18 did visit a number of the home improvement stores,
19 Lowes and Home Depot, to look at how they were
20 selling these sorts of products.

21 Q. Where are the stores that you visited?

22 A. In the New Jersey area.

23 Q. How many stores did you visit?

24 A. I went to one Lowes and one Home Depot.

25 Q. And what did you learn from that visit?

1 A. Consistent information with what I
2 presented here in both the depiction of and
3 description of vertical blinds.

4 Q. Did you talk to anyone at either Lowes or
5 Home Depot?

6 A. No, I did not.

7 Q. So you just went out there and did some
8 field work, and based on your observations you
9 made some -- you formed some opinions as to how
10 and where vertical blinds are used?

11 A. I incorporated my observations from that
12 and from my internet searching, and confirmed that
13 with Mr. Jankoski.

14 Q. Does Lowes sell vertical blinds?

15 A. Yes. They sell window coverings, a
16 variety of window coverings.

17 Q. Do they sell vertical blinds?

18 A. Yes.

19 Q. What about Home Depot?

20 A. Yes.

21 Q. Do they sell Hunter Douglas products?

22 A. I wasn't paying attention to the actual
23 manufacturers.

24 Q. Wouldn't that be relevant?

25 A. No. Not for the question I was interested

1 in.

2 Q. Having visited two entities that sell
3 window coverings, do you consider that a
4 scientific sample to base your opinions in this
5 case?

6 MR. WILLIAMS: Scientific sample of
7 what?

8 MR. JAUREGUI: Of how vertical
9 blinds are used.

10 MR. WILLIAMS: Objection. Vague.
11 Go ahead.

12 THE WITNESS: I incorporated that
13 information into other information that I
14 was also gaining, and then spoke with an
15 industry representative that provided very
16 similar information.

17 BY MR. JAUREGUI:

18 Q. And when did this usage -- is there a
19 period -- strike that. Is there a period of time
20 when you asked Mr. Jankoski about when -- you
21 know, how is it that people start using these
22 products? Do you have a specific period of time,
23 or was that 1995? Was it more recent? Was it the
24 1980s.

25 A. We didn't get into a detailed history with

1 specific timelines made out.

2 Q. All right. Any other -- strike that. Did
3 you pick up any information, any written
4 literature, any brochures from either Lowes or
5 Home Depot to substantiate your testimony here
6 today that vertical blinds are used -- have
7 certain designated uses?

8 A. Again, I think you're mischaracterizing
9 what I said. I'm not saying that there are
10 designated uses. You also said before that I was
11 saying that they were exclusively used. That's
12 not what I'm here to testify to.

13 Q. All right. I don't mean to
14 mischaracterize you, so please correct me. Go
15 ahead and answer the question.

16 A. Just that the -- that often the vertical
17 blinds are situated over, and they have features
18 that are -- that are appropriate for or share
19 unique aspects with the needs to cover tall, long
20 openings of windows, and specifically are often
21 referenced and depicted as being good for or great
22 for patio doors, sliding glass doors.

23 Q. Do you know if Hunter Douglas has any
24 literature discouraging consumers to place
25 vertical blinds in children's bedrooms?

1 A. I don't know of any such literature.

2 Q. You've never seen any such literature?

3 A. I've never seen any.

4 Q. Any other sources of information that you
5 saw or consulted with in arriving at your opinions
6 in the case regarding location and usage of
7 vertical blinds?

8 A. No.

9 Q. Did you talk to anyone else from Hunter
10 Douglas or with Mr. Jankoski?

11 A. No, I did not.

12 Q. Did you speak with Richard Anderson?

13 A. I did not.

14 Q. Do you know who Richard Anderson is?

15 A. I recognize the name.

16 Q. Okay. Isn't he one of the engineers that
17 used to work for Hunter Douglas?

18 A. I know that he's listed as an employee of
19 Hunter Douglas, but off the top of my head I...

20 Q. You reviewed his deposition?

21 A. Yes.

22 Q. Did you talk to anyone else other than
23 Mr. Jankoski or Mr. Williams about this case?

24 A. Yes.

25 Q. Who else did you talk to?

1 A. Colleagues at Exponent.

2 Q. Who are the colleagues that you discussed
3 this case with at Exponent?

4 A. I discussed this case with a scientist in
5 the human factors practice by the name of Vinuta.

6 Q. Can you spell the name?

7 A. V-I-N-U-T-A, Rau, R-A-U, Ph.D.

8 I'm sorry. That's her title. She's a Ph.D,
9 doctor.

10 Q. Oh.

11 A. Doctor.

12 Q. Dr. Vinuta is she -- is it a she?

13 A. Yes.

14 Q. Okay. Is she the head of human factors?

15 A. No. She's -- she's a colleague of mine,
16 co-worker. She assisted in review of the file and
17 performed some of the work under my direction.

18 Q. What type of work?

19 A. Some of the review of depositions to make
20 sure that I had an index such that I could get
21 back to relevant portions more quickly.

22 The literature searches at my request. Some of
23 the -- the searches for information that I would
24 be interested in I asked her to help with.

25 Q. Anyone else -- or anything else that

1 Dr. Vinuta did for you in this case?

2 A. That is a general summary of her duties.

3 Q. Did you discuss this case with anyone else
4 at Exponent?

5 A. Yes. Also Dr. Hailey Nelson.

6 Q. What's Dr. Nelson's specialty?

7 A. She is also in the human factors practice.

8 Q. For what reason did you discuss these case
9 with her?

10 A. Again, to describe to her some of the
11 information that I would be interested in from
12 deposition testimony so that an index could be
13 created so I could get back to this information
14 more quickly in the future.

15 Q. Did she author any parts of this report?

16 A. No, she did not.

17 Q. Anyone else that you discussed this case
18 with at Exponent?

19 A. I think that is the people I discussed
20 this case with.

21 Q. Who's Dr. Ray Rose?

22 A. Dr. Rose Ray.

23 Q. Right.

24 A. Is a statistician at Exponent.

25 Q. Did you discuss this case with her?

1 A. I did not.

2 Q. Did you review her report in this case?

3 A. I have reviewed her report.

4 Q. Do you have any opinions with regards to
5 her report?

6 A. I am impressed with its quality.

7 Q. Did you rely on her report for any of your
8 opinions in this case?

9 A. I have not explicitly relied on the report
10 for opinions that I've reached here.

11 Q. When you say expressively, what do you
12 mean by that?

13 A. I'm sorry. Explicitly.

14 Q. Explicitly. Okay. When you say
15 explicitly, what do you mean by that.

16 A. I don't think that there is a -- I don't
17 believe that that report is a basis that stands
18 alone for any of my opinions. I think that we
19 handled separate topic areas, topical areas.

20 Q. Is her report relevant in any way to your
21 report in this case?

22 A. I'm sure there's relevancy between the
23 issues we're discussing since we're talking about
24 the potential hazard here, but I don't rely on her
25 report to reach my conclusions.

1 Q. Let's just get something out of the way
2 quickly here. There are three defendants in this
3 case, Hunter Douglas, Window Covering
4 Manufacturers Association and the Window Covering
5 And Safety Council. You were retained in this
6 case to do work on behalf of Hunter Douglas; is
7 that right?

8 A. I was retained by Mr. Williams who
9 represents Hunter Douglas.

10 Q. Have you worked -- have you done any work
11 with Mr. Williams' office in the past?

12 A. I have not worked with Mr. Williams
13 before.

14 Q. Have you ever worked on a window covering
15 case before?

16 A. I have.

17 Q. Which case?

18 A. I've assisted in a human factors analysis
19 on -- on -- I'm not sure of the exact number but
20 on a few different litigation cases.

21 Q. Tell me what those cases are?

22 A. I don't know all their names. I can --

23 Q. Tell me how many cases.

24 A. As I said, it's -- it's a number. I would
25 say around five.

1 Q. How long ago did you do your work or when
2 is the last time you did your work before this
3 one?

4 A. Likely to be about a year, maybe more.

5 Q. Where was that case pending?

6 A. That case, I believe, was in Florida.

7 Q. What was the product involved in that
8 case?

9 A. A horizontal blind.

10 Q. What was the mechanism of injury?

11 A. I believe it was a strangulation from the
12 inner cord.

13 Q. Do you recall what city the case was in?

14 A. I do not.

15 Q. That was -- that was not the Napier case,
16 was it?

17 A. That was the Napier case.

18 Q. Now, Dr. Ray was also involved in that
19 case, was she not?

20 A. She was.

21 Q. Okay. Did you give testimony in this
22 case?

23 A. I did not.

24 Q. Did you give a report in this case?

25 A. I did not.

1 Q. What was the nature of the work that you
2 did in that case?

3 A. I was providing support to a -- another
4 expert in the case.

5 Q. Who was the other expert?

6 A. Dr. Chris Wood.

7 Q. Is Dr. Wood a human factors expert?

8 A. Yes, she is.

9 Q. Was any of the recommendations or the work
10 that you did in that case incorporated into a
11 report?

12 A. The work that I did where I -- I believe
13 were incorporated into a report. I'm a little
14 hazy on the details of what -- what was eventually
15 produced for the report or for that case as well
16 as -- I'm basing this on memory, so that I just
17 want to clarify that, that this is based on my
18 memory of the issues at hand.

19 Q. That was a Hunter Douglas window covering,
20 was it not?

21 A. I believe that was.

22 Q. You were working for the defense in that
23 case, defendants?

24 A. I believe that Exponent was retained on
25 behalf of Hunter Douglas in that matter.

1 Q. Do you have any of your work -- strike
2 that. Do you have any of the work that you did in
3 that case? Did you save it in your archives?

4 A. I did not. If there was a report
5 produced, I don't know as to its availability, but
6 that might still exist.

7 Q. Did you generally -- did you generally
8 recall what were your recommendations in
9 connection with your work in that case?

10 A. I -- again, I don't have specific memory
11 detail enough to...

12 Q. Did you have any opinions as to whether or
13 not the inner cord from the horizontal blind posed
14 an unreasonable risk of injury to young children?

15 A. Again, I'd like to clarify that, that my
16 memory is that it was an inner cord, but I'm not a
17 hundred percent sure as to the details of that
18 case or to my specific work in that. I just want
19 to...

20 Q. All right. Any other window covering
21 cases?

22 A. There were other window covering cases.

23 Q. Okay. Are they pending in court?

24 A. They were, and I'm not -- I can't recall
25 all the names nor can I really recall at this

1 point what status they are at.

2 MR. WILLIAMS: I will remind the
3 witness if there are any of these cases
4 that involve consulting on his behalf and
5 has not been disclosed by way of
6 designating him as an expert witness and
7 where he would violate any such
8 confidentiality to let me know or decline
9 to supply that information.

10 BY MR. JAUREGUI:

11 Q. With such warning, in Exhibit 3 you've
12 identified a list of cases here.

13 A. Yes.

14 Q. Any of the window blind cases that you
15 have worked on in the past, are they identified in
16 this case?

17 A. No, they are not.

18 Q. Is there a reason why you left out all of
19 the window blind cases that you've worked on in
20 your list of cases attached to Exhibit 3?

21 MR. WILLIAMS: Well, I'm going to
22 object to the implication of the question.
23 It's a list of prior deposition and trial
24 testimony. It's not a list of cases.

25 THE WITNESS: This -- what's

1 provided in Exhibit 3 is my prior four
2 years of deposition trial testimony. This
3 was my understanding of what's required in
4 a Rule 26(b), Federal Court.

5 BY MR. JAUREGUI:

6 Q. Do you specifically know that Rule
7 26(b)(4) only calls for the disclosure of
8 information of cases that an expert witness has
9 worked on for the past four years?

10 A. That's my understanding of it.

11 Q. All right. And if that understanding is
12 mistaken, can you provide me with a complete list
13 of all the cases you have worked on as an expert
14 witness on human factors?

15 A. I don't know that I can do that.

16 Q. Why is that?

17 A. Because there are matters of -- of
18 confidentiality for cases that I am sometimes
19 retained in that I don't know that I can prepare
20 that request.

21 Q. Do you know whether these cases are
22 pending in court?

23 A. Some.

24 Q. Okay. And what matters of confidentiality
25 were involved in that case? Are you suggesting

1 that the cases that you were an expert consultant,
2 those cases were sealed by the Court and they are
3 not accessible by the public?

4 A. I don't know the status of -- well, of
5 course, that's why I'm saying I don't know whether
6 I could compile a list from that standpoint. The
7 other standpoint for whether or not I could
8 compile such list is, I don't know whether or not
9 recordkeeping-wise I would be able to compile all
10 the cases I've ever been involved with.

11 Q. Dr. Sala, I'm making a request for you on
12 the record that you provide with a list of those
13 cases the substance of your testimony in each one
14 of those cases, and that you provide that to your
15 attorney. Your attorney will then determine
16 whether those cases or that information is
17 discoverable for purposes of this case.

18 MR. WILLIAMS: We're having a
19 disconnect here. You want the doctor to
20 provide a list of cases where he testified
21 and the subject of his testimony. He's
22 told you, he's given you that. He has not
23 given you something that you've asked for
24 apparently that isn't required by Rule 26
25 that your experts did not provide, which

1 is a list of every case that he's worked
2 on in the past whether or not he's
3 testified or not. I'm not sure what
4 you're asking him for.

5 MR. JAUREGUI: Well, let me make
6 that clear.

7 BY MR. JAUREGUI:

8 Q. I am asking you, Mr. Sala, to provide your
9 attorney with all of the matters that you have
10 been retained as a consultant dealing with window
11 blind cases.

12 MR. WILLIAMS: And what's the basis
13 for that request?

14 MR. JAUREGUI: Because it is
15 relevant to the issues that we are dealing
16 in this case. He is holding himself as an
17 and expert in these other cases, and I'm
18 certainly entitled to review what the
19 opinions he has offered in the past in
20 similar cases.

21 MR. WILLIAMS: Why don't you ask
22 him if he's testified in such cases or
23 prepared reports in such cases as a start?

24 MR. JAUREGUI: I've done that.

25 MR. WILLIAMS: No, you haven't.

1 MR. JAUREGUI: Yes, I did. Let me
2 ask that again.

3 BY MR. JAUREGUI:

4 Q. In the cases that you have been retained
5 as an expert in window blind cases, okay, you told
6 me that there were some four or five cases in the
7 past in addition to this one; is that correct?

8 A. I've been involved in cases and I've
9 provided support on those cases.

10 Q. And in all of those cases were you only
11 providing support or you were you the primary
12 consultant on the human factor analysis?

13 A. On the litigation matters I was providing
14 support.

15 Q. What type of support were you providing?

16 A. Much in the way of -- that Dr. Rau and
17 Dr. Nelson had been supporting me on this. I have
18 provided support to the expert to help investigate
19 issues that were pertinent to the case.

20 Q. Other than the Napier case what other
21 cases -- where were these cases pending? In what
22 states?

23 MR. WILLIAMS: The same objection
24 with respect to any cases where there was
25 no expert disclosure where you would be

1 violating any confidentiality.

2 THE WITNESS: Can I take a break to
3 speak with Mr. Williams?

4 MR. JAUREGUI: You can answer the
5 question first.

6 MR. WILLIAMS: No. He wants to
7 take a break.

8 MR. JAUREGUI: All right. Well, go
9 talk to your attorney, then.

10 -----

11 (Off the record at 2:05 p.m.)

12 -----

13 (On the record at 2:07 p.m.)

14 -----

15 MR. WILLIAMS: Okay. That break
16 was for the purpose of making sure
17 that Dr. Sala did not step on any
18 confidential matters. So I don't know
19 whether it makes sense to have the last
20 question read back or for you, Dr. Sala,
21 to simply, make clear what I thought you
22 had before, but try it again, about the
23 nature of your work on any of these cases
24 and what you did and did not do on them.

25 THE WITNESS: Sure. I provided no

1 deposition or trial testimony on any
2 window covering matter. I've provided
3 support on window covering matters in some
4 number of cases aside from this issue
5 we're dealing with here. I have never
6 been retained as the expert on these
7 matters. I can only recall the name of
8 one other matter presently to date, but I
9 do not know the status of that case or
10 whether anything had been produced or
11 someone has been named as an expert in
12 that case. I can find that out and
13 provide that information at a later date.
14 And I've never authored a report in
15 another window covering matter.

16 BY MR. JAUREGUI:

17 Q. What's the name of the case that you
18 recall?

19 MR. WILLIAMS: He just told you or
20 tried to that he doesn't know whether it
21 was pending, resolved, whether there have
22 been expert disclosures in the case.

23 MR. JAUREGUI: He said that he
24 remembered the name of the case.

25 MR. WILLIAMS: He remembers the

1 name, which he's not going to tell you
2 because he doesn't know whether there was
3 ever an expert disclosure and the
4 consulting work turned into non-privileged
5 expert work. If it did, he just told you
6 he'll find out and provide that
7 information to you.

8 MR. JAUREGUI: All right. That's
9 fair enough.

10 BY MR. JAUREGUI:

11 Q. In any of those matters, four or five
12 cases, or matters that you consulted on, other
13 than the Napier case do any of those cases involve
14 a Hunter Douglas product?

15 A. To the best of my recollection, I don't
16 believe so.

17 Q. Have you ever been asked by a company to
18 provide advice as to whether or not one of the
19 products should be re-called from the market?

20 A. I have been engaged by companies to -- to
21 address concerns potentially related to a re-call.
22 I've never been asked to make the decision as you
23 posed the question.

24 Q. And do you know whether as a result of the
25 advice that you provided in these instances, have

1 any such -- have products been re-called.

2 MR. WILLIAMS: Don't violate any
3 confidentiality.

4 THE WITNESS: I can't specifically
5 discuss what my work was in those roles
6 and those matters.

7 BY MR. JAUREGUI:

8 Q. Generally you can cannot tell me whether
9 or not the advice that you gave -- I'm not asking
10 you to disclose the name of the product, I'm not
11 asking you to disclose the name of the client, I'm
12 just asking you, on the basis of the advice that
13 you gave, do you know whether any of the products
14 at issue were re-called?

15 MR. WILLIAMS: I'm just going to
16 object. What possible use could that be
17 to you to know the underlying information?

18 MR. JAUREGUI: Well, I'll figure
19 that out in time.

20 MR. WILLIAMS: Well, no. I think
21 sometimes you can figure this out
22 beforehand.

23 If you're able to answer that
24 question without disclosing any
25 proprietary information, I'm going to let

1 you.

2 I don't think there should be much
3 of a long leash here, Arturo. Go ahead.

4 THE WITNESS: I can't -- I can't
5 specifically think of an instance where I
6 know how the information I was provided
7 has led to a product being re-called.

8 BY MR. JAUREGUI:

9 Q. Are you involved in a case right now,
10 against Target?

11 A. Yes, I am.

12 Q. Where is that case pending at?

13 A. Again, I don't know exactly to what degree
14 things have progressed in that case. I am
15 hesitant to talk about my involvement.

16 Q. You are involved in that -- is that case
17 pending in the State of Pennsylvania?

18 MR. WILLIAMS: Well, he just told
19 you he's involved in litigation against
20 Target.

21 MR. JAUREGUI: Okay. Well, let me
22 probe that for you, then. Excuse me.

23 Okay.

24 BY MR. JAUREGUI:

25 Q. Have you been retained as an expert in

1 that case?

2 MR. WILLIAMS: Let's start with has
3 he been disclosed as an expert.

4 BY MR. JAUREGUI:

5 Q. Yes. Have you been disclosed?

6 A. I do not know.

7 Q. Have you prepared a report in that case?

8 A. I don't know to what degree I have been
9 disclosed in that case.

10 MR. WILLIAMS: And as a result of
11 that are you hesitant or not willing to
12 answer any further questions?

13 THE WITNESS: Yes.

14 MR. WILLIAMS: I think that's
15 appropriate.

16 BY MR. JAUREGUI:

17 Q. That's fine. You're being retained in
18 that case but you don't know whether you've been
19 retained purely as a consultant expert versus an
20 expert that that is going to provide testimony at
21 trial; is that correct?

22 A. I don't know how I -- how I've been
23 retained or to what degree my client will choose
24 to use any of my work in this -- in that case.

25 Q. Does the letter of engagement in that case

1 delineate what your responsibilities are going to
2 be?

3 MR. WILLIAMS: I'll object to that.

4 That's privileged. The letter can
5 delineate anything it wants to, but until
6 he's disclosed as an expert, disclosed,
7 none of that information becomes
8 accessible to you, or to me for that
9 matter.

10 BY MR. JAUREGUI:

11 Q. Do you have a practice of saving drafts of
12 your reports?

13 A. When I provide a draft for a client to
14 review upon their request, then I will -- I will
15 keep that draft.

16 Q. Okay. Did you submit such draft to be
17 reviewed by either Mr. Williams or Mr. Jankoski or
18 anyone else from Hunter Douglas in this case?

19 A. I did provide a draft to Mr. Williams.

20 Q. Did Mr. Williams comment or ask you to
21 make any changes in that draft?

22 A. We discussed changes to my report with
23 respect to editing or additional information
24 that -- that he would -- he was interested in me
25 covering.

1 Q. Okay. And did you incorporate that
2 information in your report?

3 A. Where it was appropriate that my area of
4 expertise could comment on it.

5 Q. What was that information that you were
6 asked to incorporate in your report and you
7 eventually ended up incorporating in your report?

8 A. I -- I believe that I supplemented some of
9 my discussion as to the discussion of scientific
10 research around warnings.

11 Q. Any other area?

12 A. Off the top of my head, that's what comes
13 to mind as the most -- that's what's coming to my
14 mind right now.

15 Q. If you still have a copy of that draft
16 laying around, can you provide that to your
17 attorney, please?

18 A. I will.

19 MR. WILLIAMS: Okay.

20 BY MR. JAUREGUI:

21 Q. Was there any information in your report
22 when you drafted it was taken out, just yes or no,
23 by either Mr. Williams or anyone else from Hunter
24 Douglas?

25 A. We had some discussions around commas and

1 periods.

2 Q. Anything more substantive than just
3 punctuation marks?

4 A. Nothing that I would consider substantive.
5 No.

6 Q. How do you categorize the type of work
7 that you do? Is it mostly geared towards
8 corporations, business entities or individuals as
9 a result of their exposure to products?

10 A. I would characterize my work as client
11 services. Whoever clients are approaching us, if
12 I have the appropriate expertise and they are
13 asking me questions that my technical skills can
14 bring -- shed some light on, I will engage myself
15 or engage with that.

16 Q. Now, the list of cases that you provided
17 us, Exhibit No. 3, how many of these cases were
18 you retained by the plaintiffs' attorneys?

19 A. On this list there's one.

20 Q. Which one is it?

21 A. Hawley v Paschall Truck Lines,
22 Incorporated.

23 Q. Where is that case listed? In the middle,
24 top, bottom of the page?

25 A. That is the listing for deposition date of

1 08/10.

2 Q. Sir, could you just point it out to me?

3 A. All right.

4 Q. What was the issue in that case?

5 A. The visibility and driver behavior of a
6 motorist.

7 Q. And you testified on behalf of the
8 plaintiff?

9 A. Yes. I was retained by the counsel
10 representing the plaintiffs in the case.

11 Q. Can you briefly tell me the other cases
12 that you have listed here starting from the top?
13 We already discussed several of them at the
14 bottom, but could you go quickly through them.
15 Lankford versus Skaff engineering? What type of
16 case was that?

17 A. That was a warnings case, a failure to
18 warn case related to a device known as a Thumper.

19 Q. And who retained you in that case?

20 A. Counsel for Skaff Engineering.

21 Q. That's the defendant in that case?

22 A. Yes.

23 Q. All right. And you acted as an expert on
24 issued relating to the same thing?

25 A. Relating to warnings.

1 Q. Warnings? What was the outcome of that
2 case, if you know?

3 A. I don't -- I -- I believe that it settled,
4 but I'm not sure as to the outcome.

5 Q. The next case is DiRosa versus Asphalt
6 Paving Systems. Who retained you in that case?

7 A. Counsel for Asphalt Paving.

8 Q. What was your role in that litigation?

9 A. Human factors and warnings related to the
10 backing of a dump truck and the actions of a
11 worker.

12 Q. What was the outcome of that case?

13 A. Again, I believing that settled.

14 Q. Bragdon V Karl R. Johnson Trucking. Who
15 retained you in that case?

16 A. Counsel for Karl Johnson and Delbert
17 Degree.

18 Q. All right. That's for the defendants.
19 What were the issues and what was your testimony
20 in that case, if you generally remember that?

21 A. That was related to driver behavior and
22 pedestrian behavior and visibility.

23 Q. What was the outcome of that case?

24 A. That went to trial.

25 Q. What was the verdict?

1 A. Again, I think this was one of the cases
2 where they split on.

3 Q. And they shared liability?

4 A. I believe so. I don't know what the
5 proper terminology is there.

6 Q. All right. Some type of contributory
7 negligence was attached to the finding there. The
8 next item, Izikoff. We talked a little bit about
9 that. And then this other one, you have Bragdon.
10 Again, is that the same case?

11 A. That was the same case. That was the
12 listing for my trial testimony.

13 Q. McLaughlin versus John Kennedy Catholic
14 High School. Who retained you in this case?

15 A. Counsel for the high school.

16 Q. And what was the issue and the nature of
17 your testimony in that case?

18 A. This was a premises liability. The
19 plaintiff alleges to have tripped over a gate or a
20 track for a gate that was -- that was claimed to
21 have been left. This was a scissors gate --

22 Q. All right.

23 A. -- that she claims was left in the down
24 state.

25 Q. What was the outcome of that case?

1 A. Again, split.

2 Q. I take it you testified there as a safety
3 expert, a warnings expert?

4 A. Warnings and walking behavior, visibility.

5 Q. Okay. Mendez versus Estwin Manufacturing
6 Company, Inc. Who retained you in that case?

7 A. The counsel for Estwin.

8 Q. What was the issue in that case and what
9 was the nature of your involvement?

10 A. My involvement was, again, dealing with
11 warnings, a failure to warn claim.

12 Q. What was the outcome of that case?

13 A. I believe that it settled.

14 Q. Rosado versus Onarato. Who retained you
15 in that case?

16 A. The counsel for Mr. Onarato.

17 Q. And what were the issues in that case and
18 what was your testimony?

19 A. This related to driver perception,
20 reaction, and driver behavior, one motorist versus
21 another.

22 Q. Was there a resolution in that case?

23 A. I believe it was a defense verdict.

24 Q. Jennings versus Starland Ballroom. Who
25 retained you in that case?

1 A. Counsel for Starland Ballroom.

2 Q. What was the issue in that case and what
3 was your testimony?

4 A. This was, again, a premises liability, the
5 warnings and lighting in a ballroom specifically
6 related to a step.

7 Q. What was the outcome in that case?

8 A. I believe defense verdict.

9 Q. I believe we already discussed the Hawley
10 case. Kellianne Kelly-Williams versus AT&T. Who
11 retained you in that case?

12 A. Counsel for AT&T.

13 Q. What was the issue and what was your
14 testimony?

15 A. Issue related to warnings, supervision.
16 The injury and accident scenario caused by an
17 A-frame sign.

18 Q. What was the outcome of that case?

19 A. I believe that was a defense.

20 Q. All right. And that comprises the list of
21 cases that you provided to us on Exhibit 3?

22 A. In addition to the ones we've already
23 discussed.

24 Q. And there are other cases you have
25 provided trial or deposition testimony; correct?

1 A. There is one case that I provided
2 deposition testimony in the year 2006.

3 Q. And it's not listed there.

4 A. No. This is just fours years.

5 Q. I was sidetracked. I sidetracked myself.
6 I don't have anyone to blame for that. When I was
7 asking you about the number of defendants in this
8 case, you had told me that you had been retained
9 by Hunter Douglas. Remember that?

10 A. I've been retained by Mr. Williams.

11 Q. Have you ever done any work for the Window
12 Covering Safety Council?

13 MR. WILLIAMS: Objection to the
14 form, litigation, disclosed.

15 Go ahead and tell him. However, if
16 you don't know, tell him that, too.

17 THE WITNESS: I've provided
18 support, I've -- on a matter, however, I
19 would prefer to check to see the manner of
20 disclosure and get back to you.

21 BY MR. JAUREGUI:

22 Q. All right. What about the Window Covering
23 Manufacturing Association?

24 A. That would be the same answer.

25 Q. Were you asked to offer any opinions on

1 behalf of the Window Covering Safety Council or on
2 behalf of the Window Covering Manufacturers
3 Association in this report?

4 A. No, I haven't.

5 Q. Did you discuss the subject of your report
6 with Mr. Michael Weiss or Mr. Carroll in this
7 case, his co-counsel?

8 A. I have not.

9 THE WITNESS: Just going to get a
10 refill.

11 MR. JAUREGUI: All right.

12 -----

13 (Pause)

14 -----

15 BY MR. JAUREGUI:

16 Q. Have you ever testified as an expert in
17 the State of Illinois?

18 A. No.

19 Q. Of the cases that you have -- you have
20 given deposition testimony or trial testimony, how
21 many of those cases have been in Federal Court?

22 A. Three of my depositions were in Federal
23 Court.

24 Q. Three of the depositions were in cases
25 that were pending in Federal Court?

1 A. Yes.

2 Q. Were any of those cases tried?

3 A. One is still active, the other two have
4 settled.

5 Q. In the case that's still active, I take it
6 there has been no trial yet?

7 A. There has been no trial yet.

8 Q. So in the three days where you have been
9 retained as an expert, were you retained as a
10 human factors expert?

11 A. Yeah.

12 Q. You have not testified at trial in any of
13 those cases?

14 A. I have not.

15 Q. Have your opinions offered in cases where
16 you've been retained as an expert, have been
17 limited or excluded by any court?

18 A. No.

19 Q. Have they been challenged?

20 A. As in like?

21 Q. Challenged on the basis as in motions in
22 limine.

23 A. Yes.

24 Q. Do you recall what was the outcome of
25 those challenges?

1 A. In any case where that has proceeded to
2 the point of trial or deposition, I believe that
3 they've been -- been successfully defended, I
4 guess. And --

5 Q. Your testimony was allowed?

6 A. Was allowed. And some are pending and
7 wouldn't be made until the time of trial, I
8 believe.

9 MR. JAUREGUI: I just want to make
10 sure that he answered the question.

11 BY MR. JAUREGUI:

12 Q. Is that you have been retained, you have
13 been involved in other window covering cases, but
14 have you ever given testimony in a trial in a
15 window covering case?

16 A. I have not been retained as the expert on
17 a window covering case.

18 Q. Period?

19 A. Period.

20 Q. Thank you. In this case, for purposes of
21 your report, did you review the IDIs, the in depth
22 investigations?

23 A. Yes.

24 Q. And did you find any information useful in
25 preparing your work for this case?

1 A. I think I found that there's consistency
2 with what had been recorded in the number of
3 investigations that were published. My review of
4 them was consistent with what has been published
5 and discussed in the scientific literature.

6 Q. Do you know about how many such
7 investigative reports you reviewed?

8 A. I believe that -- well, I specifically was
9 focusing on the ones from 1982 up through 1995
10 including 1995.

11 Q. So how many in depth investigation reports
12 have you reviewed?

13 A. Those are the number of investigative
14 reports. Whether they were fully classified as
15 what the CPSC would determine an IDI or in depth
16 investigation, I believe there were between 120
17 and 130, rough estimate.

18 Q. From your view of the 120 or 130
19 investigation reports that you reviewed, this is
20 reports from the Consumer Products Safety
21 Commisison; correct?

22 A. Yes. These are the reports that have been
23 produced in this case?

24 Q. The reports that have been produced in
25 this case?

1 A. Yes. The reports referenced in my list of
2 materials that we spoke of earlier.

3 Q. We reviewed your report before, Dr. Sala,
4 but I don't recall in the materials that you have
5 there containing any independent investigation
6 reports in that material?

7 A. The -- included in these binders are not
8 the investigative reports. I -- when we went
9 through the list of materials that were not
10 included in this binders, one of the things that
11 we discussed at that point was the epidemiological
12 investigation reports and supplemental documents
13 that were produced by Hunter Douglas.

14 Q. Only those that were produced by Hunter
15 Douglas?

16 A. Yes.

17 Q. In addition to the investigative --
18 investigation reports or IDIs that Hunter Douglas
19 produced in this litigation, did you review any of
20 the reports from the Consumer Product Safety
21 Commission directly?

22 A. Not specifically for this case.

23 Q. So you recall having reviewed about 120,
24 130 reports in reviewing or in preparing your
25 report in this case?

1 A. Yes.

2 Q. Out of this report did you see any
3 instance in which there was either a serious
4 injury or a strangulation death that resulted from
5 the interaction of a child from a window covering
6 fitted with a wand?

7 MR. WILLIAMS: And no cord or
8 chain?

9 MR. JAUREGUI: That's correct.

10 THE WITNESS: Based on my
11 recollection as I sit here today, I don't
12 recall that.

13 BY MR. JAUREGUI:

14 Q. All right. In all of the literature that
15 you have reviewed, do you have any recollection of
16 any instances of serious injury to young children
17 or strangulation death of a young child that was
18 caused by the wand of a window covering?

19 A. Well, depends on what you mean by serious
20 injury.

21 Q. Require hospitalization, suffer brain
22 injury, any -- any type of either -- an injury
23 which require hospitalization or death.

24 A. I don't have a -- any documentation of
25 what you're speaking of here with me today, and I

1 did not look for any such information related to
2 this case or this matter.

3 Q. But do you know if -- my question was, to
4 your knowledge, do you know whether or not in the
5 literature that you reviewed whether there are any
6 documented cases, and let's limit it to
7 strangulations, to make it easier, of
8 strangulations of a young child from a window
9 covering fitted only with a wand and no cords?

10 A. Again, I am not aware of any
11 strangulations for a want only device from any of
12 the materials that I reviewed.

13 Q. What were you asked to do in this case?

14 A. I was asked to provide a human factors
15 evaluation as to the design of this product and
16 specifically offering the different control
17 mechanisms for use as well as to evaluate the
18 warnings and safety claims being made in this
19 matter.

20 Q. And you reached some opinions in this
21 case; correct?

22 A. Yes. And also to review the opposing
23 experts and their opinions in the case.

24 Q. Just get this out of the way. I know you
25 had some criticism of Stetler's, Mr. Stetler's

1 opinions in the case; correct?

2 A. I called out some criticisms that I have
3 of his report. Yes.

4 Q. Did you have any criticisms of
5 Dr. Wright's report?

6 MR. WILLIAMS: I'm going to let him
7 answer the question. I'm just going to
8 note an objection, that that's a vague,
9 compound question, calls for narrative
10 answer.

11 BY MR. JAUREGUI:

12 Q. The reason for my questions, in your
13 report you specifically identified some of the
14 disagreements that you had with Mr. Stetler's
15 report. Your report notes that you reviewed
16 Dr. Wright's report, but I did not see any
17 criticism of his report. So my question to you as
18 you sit here today, do you have any criticism of
19 Dr. Wright's report?

20 MR. WILLIAMS: Same objection.

21 THE WITNESS: I would have, if
22 asked specifically about portions of his
23 analysis, where it's appropriate that
24 to -- and there's overlap between our
25 sciences, I might have comment. But

1 specifically with respect to the issues
2 that -- that I have been asked to address,
3 there was more overlap between Statler's
4 report and my own.

5 BY MR. JAUREGUI:

6 Q. I don't know how to take that answer, but
7 I'll come back to it in a minute. Your opinions
8 in this case are contained on Page 14 of your
9 report; is that correct?

10 A. These are summary --

11 Q. A summary of your opinions?

12 A. Yeah. Summary of my opinions.

13 Q. You have four different opinions in the
14 case?

15 A. I -- again, summary.

16 Q. Summaries of your opinions. Okay. Can
17 you read the summaries of your opinions into the
18 record. First read the first bullet point there.

19 A. "The response of Hunter Douglas
20 specifically and the window covering industry in
21 general in the mid-1990s to the identification of
22 child strangulation hazards associated with window
23 covering cords and the developmental process
24 engaged in by Hunter Douglas and the window
25 covering industry to address these concerns was

1 reasonable given the accumulated knowledge of
2 these incidents."

3 Q. Okay. What is the second opinion or
4 summary of your opinion that you have reached on
5 Page 14?

6 A. "The product's functionality would be
7 eliminated" -- excuse me -- "would be limited or
8 eliminated for a portion of the intended user
9 population due to human factors issues related to
10 people's capabilities and limitations and the
11 expected use environment for the product if the
12 PermAssure Wand were the only control mechanism
13 available. Given the human factors relevant to
14 this product and the understanding of the hazards
15 posed by vertical blinds, it was reasonable for
16 Hunter Douglas to have offered consumers options
17 as to the control mechanisms for the subject
18 blinds."

19 Q. And your opinion, your third opinion, or
20 the summary of your third opinion.

21 A. "Mrs. Davis and Mrs. Roberts understood
22 the potential hazards associated with cords
23 attached to window blinds. Despite this
24 understanding, they fail to address this
25 condition. There is no scientific reason to

1 believe that additional or alternative warnings or
2 safety information would have altered their
3 behavior with respect to the selection, purchase,
4 installation and use of the incident product."

5 Q. And your fourth opinion or summary of your
6 fourth opinion as contained on Page 14.

7 A. "Mr. and Mrs. Padilla did not demonstrate
8 safety information seeking behaviors with respect
9 to child safety in general, and that related
10 specifically to window coverings and displayed
11 limited response to acknowledge and obvious safety
12 concern. There is no scientific reason to believe
13 that additional or alternative warnings or safety
14 information provided with the product would have
15 altered their behavior and averted this incident."

16 Q. All right. Thank you for that. Now, let
17 me ask you a question. Do you know if Hunter
18 Douglas maintains any data specifically dealing
19 with injuries from its products?

20 A. I don't know the -- the different data
21 that Hunter Douglas might retain.

22 Q. Did you ask them if they maintained such
23 data?

24 A. I did not ask.

25 Q. Would that be relevant to your inquiry in

1 this case if they had some data that they
2 maintained regarding the rate of incident -- the
3 rate of injury incidents from the product?

4 A. I had access to information about the
5 hazard in general, and so I'm comfortable with the
6 data that was -- that I had available.

7 Q. In your report you referenced the 1994,
8 1995 Retrofit Action Plan. Do you recall that?

9 A. What do --

10 Q. All right. What do you know about the
11 efficacy of the Retrofit Action Plan in terms of
12 addressing the dangers of strangulation of young
13 children from horizontal blinds?

14 MR. WILLIAMS: Objection. Vague.
15 What do you mean by efficacy?

16 THE WITNESS: I actually was going
17 to ask what you mean by efficacy.

18 BY MR. JAUREGUI:

19 Q. Was it successful?

20 A. I haven't been asked to evaluate the
21 effectiveness or any of the outcome measures on
22 that action and I'm not prepared to -- to do so.

23 Q. So you have no opinion on that?

24 A. Correct.

25 Q. Do you know what were the approximate --

1 strike that. Do you know what was the approximate
2 number of window coverings in American homes in
3 1995?

4 A. I do not.

5 Q. Do you know what were the approximate
6 number of variable blinds in American homes in
7 1995?

8 A. I do not have that data on there.

9 Q. Would that type of data be at all relevant
10 to your opinions in this case?

11 A. I don't -- I don't foresee that data
12 affecting my opinions in this case.

13 Q. What is your understanding as to what was
14 the purpose of the Retrofit Action plan of '94,
15 '95?

16 A. The purpose?

17 Q. Yes.

18 A. Of the Retrofit Action Plan? With the --
19 the intent of the 1994 Action Plan was to address
20 potential hazards associated with children
21 interacting with window coverings.

22 Q. And was a potential hazard dealing with
23 strangulation?

24 A. Yes.

25 Q. Was it directed to a particular product?

1 A. Window coverings.

2 Q. Didn't say whether or not it was
3 horizontal blinds as opposed to all types of
4 blinds?

5 A. Well, I believe that there might have been
6 different recommendations based on the type of
7 blind, but this is generally window coverings.

8 Q. I may have asked you this when we were
9 reviewing your materials, but do you have an
10 opinion as to whether the danger from the vertical
11 blind with loop cords is a latent and hidden
12 danger versus an open and obvious danger?

13 MR. WILLIAMS: Objection. Vague
14 and ambiguous.

15 THE WITNESS: I believe we
16 discussed this a little bit earlier. And
17 the problem I have in answering some of
18 this question is, again, the
19 characterization that you're using of open
20 and obvious versus hidden and latent. I
21 think that there's a lot of factors that
22 would go into determining whether or not
23 in a given situation something might be
24 open or obvious to someone.

25 BY MR. JAUREGUI:

1 Q. All right. You are aware that the United
2 States Consumer Product Safety Commission
3 considers the danger of strangulation caused by
4 window covering cords to be a hidden danger, do
5 you not?

6 A. I've seen them reference that oftentimes,
7 that it would be considered a hidden. And it
8 would depend on -- they talk about different cords
9 and different varieties.

10 Q. And do you disagree with that
11 characterization?

12 MR. WILLIAMS: I'll object.

13 That's overly broad.

14 BY MR. JAUREGUI:

15 Q. Whether the -- do you agree with the
16 characterization by the Consumer Product Safety
17 Commission that the danger of strangulation posed
18 to young children from window blind cords is a
19 hidden danger?

20 A. I don't think --

21 MR. WILLIAMS: Same objection.

22 THE WITNESS: I don't think that I
23 can endorse that statement across the
24 board. I think that -- that at times,
25 given certain situational factors, it may

1 or made not be recognized by the people,
2 and that -- depending on, again, the
3 situational factors, there's usually
4 something to either say that there is
5 reasons for or reasons against them
6 noticing or not noticing whether or not
7 this was a hazard in the environment.

8 BY MR. JAUREGUI:

9 Q. So you don't agree or you disagree with
10 it?

11 A. Again, I can't endorse across the board a
12 statement that broad.

13 Q. All right. Do you have an opinion as to
14 whether the vertical blinds in issue in this case
15 posed an unreasonable risk of injury, i.e.,
16 strangulation of young children?

17 A. I believe if we're talking about risk of
18 injury, I think that Dr. Ray is really dealing
19 with -- with the -- with those issues, and I defer
20 to her and her report and her deposition, or her
21 testimony.

22 Q. So you have no opinion as to whether or
23 not the vertical blind in this case posed an
24 unreasonable risk of injury?

25 A. Again, I defer to another expert in that

1 matter.

2 Q. Did you ever see the vertical blind in
3 this case other than seeing it in pictures?

4 A. In pictures.

5 Q. Did you ask your attorney if you could see
6 the actual vertical blind?

7 A. No, I did not.

8 Q. Would that be important to your analysis
9 in this case?

10 A. The incident vertical blind, I do not
11 believe that seeing the incident vertical blind
12 would be important to my analysis here.

13 Q. Why is that?

14 A. I'm not particularly dealing with issues
15 as to the incident blind versus a -- just the
16 style of the blind. I'm interested more in -- or
17 my analysis really pertains to the nature of the
18 product and not whether or not the incident one
19 had some particular feature or factor involved and
20 whether there is a specific defect in that instant
21 blind. That's not what I'm here to deal with.

22 Q. All right. Do you know whether or not
23 there was a specific defect in the incident blind?

24 A. I haven't see any evidence to that effect.

25 Q. What kind of evidence would you need to

1 see whether or not there was a particular defect
2 in the window covering blind in this case?

3 MR. WILLIAMS: Vague. Ambiguous.
4 Go ahead if you can.

5 THE WITNESS: I really don't see my
6 role pertaining to determining whether
7 there was a particular defect of that
8 incident blind. That would be -- I don't
9 see how my analysis would -- would be
10 informed, or informed at.

11 BY MR. JAUREGUI:

12 Q. Do you know what the total number of
13 window coverings Hunter Douglas produced in 1995?

14 A. I have no specific knowledge of that.

15 Q. Do you know what was the percentage of
16 vertical window blinds produced by Hunter Douglas
17 in 1995 compared to other coverings that are
18 non-vertical?

19 A. I believe that there was a reference to
20 that in perhaps Mr. Jankoski's deposition
21 testimony. And while I can't recall it off the
22 top of my head, I defer to whatever was referenced
23 in that -- that testimony.

24 Q. Is that data relevant to your analysis in
25 this case, i.e., the number of vertical blinds

1 produced in any given year versus the number of
2 non-vertical blinds for those in a given year with
3 loop cords?

4 A. I -- I don't believe that -- that number
5 of fluctuations in the number would affect my
6 overall opinions.

7 Q. We've already talked a little bit about
8 the device, a wand. You remember that?

9 A. Yes.

10 Q. You understand there is testimony from the
11 employees from Hunter Douglas that have indicated
12 that if the blind in issue had been fitted with a
13 wand, it would have eliminated the use of the loop
14 cords and the chain to operate the vertical blind
15 at issue. Is that your understanding?

16 A. I understand that to be the testimony.

17 Q. Do you agree with that?

18 A. Well, I think that -- that was part and
19 parcel to the design options. It could be chosen
20 to have the looped cords or to have the wand.

21 Q. If in 1995 when this blind was
22 manufactured there were other alternative designs
23 that were safer than the vertical blind with loop
24 cords and chains and the cost would have been
25 approximately the same, is this a factor that you

1 would take into account as a human expert, as a
2 human factors analysis expert, when analyzing
3 whether or not Hunter Douglas exercised due care
4 to warn consumers?

5 MR. WILLIAMS: I'll object. It's
6 vague and incomplete hypothetical.

7 Go ahead if you think you can take
8 a stab at it.

9 THE WITNESS: Can you try to
10 rephrase the question. I think I got lost
11 somewhere in there.

12 BY MR. JAUREGUI:

13 Q. Does it matter to you as a human factors
14 expert when at the time the blind was manufactured
15 there were other alternative, safer designs
16 equally economical that Hunter Douglas could have
17 used?

18 A. I believe that -- that I've outlined here
19 today and also in my report, my analysis, based on
20 alternative designs and what the product offerings
21 were. You are referencing safer designs, and I
22 find that that is a -- that's a -- a -- I can't
23 answer the question that you're posing in that
24 way, because you're using this term safer and I
25 don't know how you are meaning it in the context

1 of this -- this product.

2 Q. All right. I asked you earlier if you had
3 seen any incidents in the literature that you
4 reviewed involving the strangulation of a young
5 child from a wand, you know, window covering, and
6 I believe your answer was no; correct?

7 A. Yes. I remember this line of questioning.

8 Q. All right. So let me ask you the question
9 in this way. Are you going to testify in front of
10 the jury, if this case goes to trial, and
11 represent to the jury that a window blind a
12 vertical window blind with loop cord chain is as
13 equally dangerous when it comes to the risk of
14 strangulation of young children than the risk of
15 strangulation presented by a window blind fitted
16 with a wand?

17 MR. WILLIAMS: Objection. Vague.
18 I don't know how you strangle on a window
19 blind fitted with a wand, at least how you
20 strangle on the wand.

21 MR. JAUREGUI: That's the issue in
22 this case.

23 MR. WILLIAMS: That's not the
24 issue. That's an issue likely to be put
25 to the jury in this case. We'll disagree

1 about that down the road. But your
2 question, it's vague and ambiguous and
3 unintelligible.

4 THE WITNESS: How you phrased the
5 question, no, that is not going to be my
6 testimony, specifically how you phrased
7 that question.

8 BY MR. JAUREGUI:

9 Q. What trouble do you have with the way how
10 I asked you that question?

11 MR. WILLIAMS: No. He doesn't have
12 to tell you what's wrong with your
13 question.

14 BY MR. JAUREGUI:

15 Q. Is there something you find confusing
16 about my question?

17 A. No. I understood your question. And your
18 question was whether or not my testimony was going
19 to be what you've stated, and that will not be my
20 testimony.

21 Q. All right. Did you consider a vertical
22 blind with loop cords and loop chain to pose a
23 greater or lesser risk of strangulation to young
24 children than the risk of strangulation posed to
25 young children from a vertical blind with a wand?

1 MR. WILLIAMS: Objection.

2 Incomplete hypothetical.

3 THE WITNESS: The -- when we're
4 talking about strangulation, the wand
5 mechanism in and of itself -- the wand
6 itself I do not believe would pose the
7 potential hazard for strangulation. When
8 we're -- you start asking questions
9 broadly and generally about the risk of
10 strangulation related -- one product
11 versus another without further details and
12 without situational factors and without
13 some data to associate with these
14 products, I don't know that I can answer
15 the question.

16 BY MR. JAUREGUI:

17 Q. All right. The years 1995 Hunter Douglas
18 has the technology, the knowledge and the ability
19 to produce two vertical-type blinds. One of the
20 blind is a vertical blind with loop cord and
21 chain, the other blind is with a wand.

22 A. Okay.

23 Q. Now, as an expert and human factor
24 analyst, do you have an opinion as to which of
25 those blinds poses a greater risk of strangulation

1 to young children?

2 MR. WILLIAMS: Same objection.

3 THE WITNESS: Again, I'm not
4 offering opinions as to the risk of
5 strangulation. What I'm offering opinions
6 to are -- is the reasonableness of
7 providing those as options. In my
8 analysis, the options made available by
9 Hunter Douglas provide for safer use of
10 the product and provide for accessible
11 option to a wide range of consumers.

12 BY MR. JAUREGUI:

13 Q. So are you saying that options is more
14 important than safety?

15 MR. WILLIAMS: Objection.
16 Argumentative. Misstates his testimony,
17 and generally just a lousy question.

18 MR. JAUREGUI: Well, thank you,
19 Jeff.

20 MR. WILLIAMS: Objection. Lousy
21 question. Seriously, you know that's not
22 what he just said. And so the
23 argumentative and misstates his testimony
24 is a sincere objection.

25 BY MR. JAUREGUI:

1 Q. In your analysis as a human expert, is
2 there any time when the consumer options are
3 overridden by safety concerns?

4 MR. WILLIAMS: Same objection.

5 Hopelessly vague, ambiguous,
6 unintelligible, and incomplete
7 hypothetical.

8 THE WITNESS: There are, I think, a
9 range of products and situations that I
10 could consider and could reach opinions
11 on. However, for the issue at hand, I
12 think I've stated my opinions on the
13 options provided by Hunter Douglas in
14 offering to consumers the loop chain and
15 cord and the PermAssure wand.

16 BY MR. JAUREGUI:

17 Q. And those options were reasonable -- I
18 mean, Hunter Douglas' conduct was reasonable in
19 offering those options to consumers?

20 A. Yes.

21 Q. And you are of the same opinion even
22 though at the time when those options were offered
23 by consumers, Hunter Douglas -- it was well known
24 to Hunter Douglas about the risk of strangulation
25 to young children from loop cords and loop chains?

1 MR. WILLIAMS: Objection. Vague
2 and ambiguous. Go ahead.

3 THE WITNESS: I believe that I've
4 stated today and in my report that the
5 time and based on the knowledge of what
6 was known, the human factors
7 considerations for the design of the
8 product, that it was reasonable to offer
9 the options made available to consumers by
10 Hunter Douglas.

11 BY MR. JAUREGUI:

12 Q. And is it reasonable in this case if
13 Hunter Douglas is the only one that has
14 information about the risk of strangulation to
15 young children and the consumer does not have that
16 information or knowledge about the risk of
17 strangulation?

18 MR. WILLIAMS: I'm sorry. Could I
19 have the question read back.

20 -----

21 (The court reporter read back the
22 last question.)

23 -----

24 MR. JAUREGUI: Before you go on,
25 can you read the previous question and his

1 previous answer, because that's related to
2 his answer that he just gave.

3 -----

4 (The court reporter read back the
5 requested testimony.)

6 -----

7 MR. WILLIAMS: I'm going to object.
8 mischaracterizing the record. It's vague
9 and ambiguous.

10 And if you still remember it after
11 all this time, or want it read back, let
12 us know.

13 MR. JAUREGUI: Let's try to start
14 over again. I think that will probably be
15 best for all of us here.

16 BY MR. JAUREGUI:

17 Q. Your opinion, or one of your opinions in
18 this case is that you went back and you reviewed
19 the historical information, what was known to
20 Hunter Douglas at the time, the options that were
21 available, in taking into account all of those
22 things, you conclude that it was reasonable for
23 Hunter Douglas to offer to consumers the vertical
24 blinds with the options that it had, one with the
25 cords and the other one with the wand.

1 MR. WILLIAMS: Same objection.

2 THE WITNESS: I stand by my stated
3 opinions in the report, which I believe
4 what we're trying to characterize here is
5 that Hunter Douglas is reasonable to offer
6 the options they made available.

7 BY MR. JAUREGUI:

8 Q. All right. That's fine. So let's go from
9 there. Is it reasonable for Hunter Douglas to
10 continue to offer choices to consumers in making
11 available vertical blinds with loop cords and
12 chains when it knows -- when it knows of the risk
13 of strangulation to young children from the loop
14 cords and consumers do not have the same knowledge
15 as Hunter Douglas has of the risk?

16 MR. KORNARENS: Objection. Couple
17 of objections. Assumes facts not the
18 supported by the record. It's also vague
19 and ambiguous because I don't know if you
20 want him to include in the his answer the
21 considerations of the safety hazards that
22 would be presented if Hunter Douglas took
23 away the choice cords and chains. You
24 don't say if that's part of your question.

25 MR. JAUREGUI: That's not part of

1 my question. No.

2 MR. WILLIAMS: Objections are well
3 taken.

4 THE WITNESS: Based on the level of
5 knowledge, the communication, the -- the
6 factors present in 1995 and what was
7 available to and what was being put out, I
8 stand by the opinion that I held in this
9 report that it's reasonable for Hunter
10 Douglas to have made the options available
11 to the consumer.

12 MR. JAUREGUI: Actually, let's take
13 a break.

14 -----

15 (Off the record at 3:06 p.m.)

16 -----

17 MR. JAUREGUI: Back on the record.

18 -----

19 (On the record at 3:14 p.m.)

20 -----

21 BY MR. JAUREGUI:

22 Q. All right. Is the level of public
23 awareness of risk of strangulation relevant to
24 your analysis as a human factors expert?

25 A. I think that the public awareness is

1 something that I've incorporated into it. But as
2 far as in this specific case, the issue has not --
3 has not been the basis for the opinions expressed
4 here.

5 Q. So is public awareness, consumer awareness
6 in this case of the risk of injury, that's
7 something that would not be relevant to your
8 report in this case?

9 A. No. That -- that's -- I don't believe
10 that that's true. That's not what I was trying to
11 express.

12 Q. Okay. I'm sorry. Go ahead.

13 A. The -- in this case I have considered some
14 that -- that -- that information with respect to
15 the incident at hand. For example, with respect
16 to Mrs. Roberts and Mrs. Davis, at the time of
17 purchase they were very much well aware of these
18 hazards. And so their actions and decisions were
19 informed based on the information that they had,
20 and their actions were performed and their
21 behaviors incorporated in this information.

22 Q. So for purposes of your analysis, you took
23 specifically into account the awareness of
24 Miss Davis and Miss Roberts, one -- the one -- the
25 purchaser and then the other one, the owner of the

1 home where the blind was installed.

2 A. And also the installers.

3 Q. The installers. Okay. So I guess you
4 consider public awareness relevant to your
5 opinions in this case as a human factor analyst?

6 A. I don't think that that's just what I
7 stated.

8 Q. Okay. It's late. We're going to get to
9 your opinions, specific portions of your opinions
10 in one second. Do you consider yourself to be an
11 expert in the field of engineering?

12 A. No.

13 Q. Do you have any training in the designing
14 of window coverings, and in particular, vertical
15 blinds?

16 A. In the design of them?

17 Q. Yes.

18 A. No.

19 Q. Have you ever designed a window covering?

20 A. And, I'm sorry. Going back to that,
21 you're talking about the mechanical or engineering
22 design of window coverings?

23 Q. Yes.

24 A. No.

25 Q. All right. Have you ever designed a

1 window covering?

2 A. I have not designed a window covering.

3 Q. And are you familiar with the operating
4 mechanism of the vertical blind with a loop and
5 chain? Strike that. We covered those issues.
6 Do you have any experience or expertise in the
7 manufacture of window coverings?

8 A. Manufacturing, no.

9 Q. Do you have any experience or knowledge in
10 the distribution and marketing of window
11 coverings?

12 A. No.

13 Q. To your knowledge, do you know if Hunter
14 Douglas does any product safety testing to
15 evaluate the risk of strangulation to young
16 children from vertical blinds prior to marketing
17 and distributing vertical blinds in 1995?

18 A. Aside from testimony in the case I have no
19 source of knowledge about testing programs or
20 considerations for Hunter Douglas in this design.
21 So, no.

22 Q. Would testing about the risk of
23 strangulation from loops of window and blind cords
24 be relevant to someone such as yourself in a case
25 of this nature?

1 A. What do you mean by testing?

2 Q. Yeah. Testing of the risk of
3 strangulation to young children.

4 A. Again, I'm having difficulty with the idea
5 of testing of the risk of strangulation.

6 Q. In 1995 there were already reports that
7 children were being strangled from window
8 covering cords; correct? You agree with that
9 statement?

10 A. Yes.

11 Q. All right. Given what Hunter Douglas knew
12 in 1995 about the risk of strangulation, was it
13 reasonable for Hunter Douglas not to have done any
14 testing to evaluate the risk of injury of young
15 children from vertical blinds fitted with loop
16 cord and a loop chain?

17 MR. WILLIAMS: Objection. Vague,
18 ambiguous, incomplete hypothetical.

19 THE WITNESS: What do you mean by
20 testing?

21 MR. JAUREGUI: Testing about the
22 safety of the product, the likelihood of
23 injury of young children.

24 MR. WILLIAMS: What kind of
25 testing?

1 MR. JAUREGUI: There was testing
2 about the risk of injury, the likelihood
3 that young children will be entangled or
4 strangled from the loop cords from
5 the -- from vertical blinds.

6 THE WITNESS: I think that this
7 is -- again, I'm having difficulty with
8 the way that you're phrasing the question
9 or you're asking the question. Testing
10 the risk of strangulation hazard, I don't
11 know what you're getting at there. Then
12 you start talking about the likelihood of
13 this happening or -- and really, at 1995 I
14 think that Hunter Douglas was taking the
15 role with the CPSC and with the Window
16 Cord Manufacturing Association -- Window
17 Covering Manufacturing Association in
18 researching and investigating this issue.
19 So I don't -- I'm just having some
20 difficulty in your characterization and
21 asking of the question.

22 BY MR. JAUREGUI:

23 Q. Okay. So your understanding, you're not
24 aware of any testing that was done by Hunter
25 Douglas prior to the manufacture of the vertical

1 blind at issue with regard to the safety and the
2 risk of strangulation that loop cords from
3 vertical blinds pose to young children?

4 MR. WILLIAMS: Same objection.

5 THE WITNESS: Again, I -- I -- what
6 are you talking about? The testing for
7 the risk of strangulation. I don't know
8 what you're referencing there.

9 BY MR. JAUREGUI:

10 Q. To your knowledge, was there any testing
11 done to evaluate the safety of vertical blinds
12 with loop cords as it relates to the exposure of
13 children coming into contact with vertical blinds
14 with loop cords?

15 MR. WILLIAMS: Objection. Vague
16 and ambiguous as to time.

17 THE WITNESS: I believe that there
18 was investigations into this issue, but as
19 you're phrasing with the testing of the
20 safety with respect to the number of
21 children coming into exposure, I don't
22 know what testing you might be referencing
23 or even what that might look like. So,
24 no, I'm not aware of any testing of that
25 sort.

1 BY MR. JAUREGUI:

2 Q. I'm referring to any kind of testing that
3 you're aware of.

4 A. I am not aware and I do not know the full
5 range of testing that Hunter Douglas may have
6 employed with respect to vertical blinds, and I
7 don't know if any of that would fit the
8 description of what you're trying to explain to
9 me.

10 Q. Do you have an opinion as to whether or
11 not it was foreseeable for Hunter Douglas -- I'm
12 sorry. Do you have an opinion as to whether or
13 not it was foreseeable for Hunter Douglas a child
14 may come into contact and suffer a strangulation
15 injury from the window covering cords?

16 MR. WILLIAMS: Objection. Vague
17 and incomplete hypothetical. And to the
18 extent that you're asking about
19 foreseeable and not at least reasonably
20 foreseeable, it's not designed to lead to
21 the discovery of admissible evidence.

22 BY MR. JAUREGUI:

23 Q. Do you have an opinion?

24 A. I think that Hunter Douglas -- can you
25 actually -- I'm sorry. Can you actually --

1 Q. Let me just -- yeah. As a human factor
2 expert, a human factors expert, is foreseeability
3 of an injury from a product relevant to your
4 opinions?

5 MR. WILLIAMS: He has several
6 opinions. I don't think that's something
7 you can lump together, so I'll object that
8 it's vague and compound.

9 BY MR. JAUREGUI:

10 Q. Just generally, foreseeability of injury.
11 Is foreseeability of injury from a consumer coming
12 into contact with a product, is that something
13 that is relevant to an expert such as yourself in
14 human factors analysis?

15 MR. WILLIAMS: Same objection.

16 THE WITNESS: I think that some of
17 the -- some of these issues are -- are
18 -- it's difficult to -- to address the
19 question as you're posing it because this
20 is part and parcel to some of the ideas of
21 warnings and safety information in
22 general. In general, safety information
23 is provided along with the product to
24 encourage safe use recognizing that there
25 are hazards that can be associated with

1 the product. So when you ask a blanket
2 statement about foreseeability and then
3 try to say this is related to the unsafe
4 nature of a product, that's -- that's not
5 necessarily something that I can endorse
6 or that I -- it's very difficult for me to
7 answer a question that you speak of in
8 that way.

9 BY MR. JAUREGUI:

10 Q. All right. Did you ask, in your
11 conversations that you had with Mr. Jankoski, when
12 Hunter Douglas first became aware of the risk of
13 strangulation of young children from window
14 covering cords?

15 A. I don't remember posing that question to
16 him.

17 Q. What is your understanding as to when
18 Hunter Douglas first became aware that window
19 coverings with loop cords present a hazard of
20 strangulation to young children?

21 MR. WILLIAMS: Objection. Vague.

22 THE WITNESS: I think in my report
23 what I outlined was a fairly detailed
24 history of this sort of knowledge
25 coming -- becoming available to the

1 industry as well as to government
2 agencies. And, so, you know, I think that
3 the time frames that I have referenced
4 here with when this information was
5 becoming available in the '80s with
6 respect to ligature and the types of
7 different hazards posed to children by a
8 variety of products, this is probably the
9 development of the knowledge within that
10 industry and to manufacturers in that
11 industry.

12 BY MR. JAUREGUI:

13 Q. So sometime in the 1980s?

14 A. And that would be based on my review of
15 this -- this -- the history of this accident
16 analysis and what I presented here. Certainly I,
17 as I discussed with you, I did not specifically
18 ask that of Mr. Jankoski. And so if there is
19 separate information that he might have from being
20 in that field, certainly, you know, I wouldn't
21 dispute that. But based on historical records,
22 this is when the -- these hazards and knowledge
23 about these hazards was becoming brought to life.

24 Q. Can you agree with me that prior to 1995,
25 the date when this vertical blind was

1 manufactured, Hunter Douglas already knew or
2 should have known that children can become
3 strangulated from loop cords of window coverings?

4 MR. WILLIAMS: I'm going to object
5 to that on the grounds that it's vague and
6 ambiguous with respect to what type of
7 knowledge you're inquiring about.

8 Go ahead if you understand it.

9 THE WITNESS: I believe that
10 there's evidence in this case that these
11 are -- the -- the overall hazard pattern
12 is something that by that time was being
13 considered, and there's testimony that was
14 known and then was being incorporated into
15 their practices.

16 BY MR. JAUREGUI:

17 Q. All right. Did you ask Mr. Jankoski or
18 anyone else at Hunter Douglas if at the time when
19 the vertical blind at issue was manufactured, did
20 it have any alternative designs that would reduce
21 or eliminate the risk of strangulation of young
22 children from loop cords and loop chains?

23 MR. WILLIAMS: Objection. Other
24 than the ones they were already offered or
25 including those?

1 BY MR. JAUREGUI:

2 Q. Including those.

3 MR. WILLIAMS: Did you ask --

4 THE WITNESS: I did not ask

5 Mr. Jankoski about that during our

6 conversation.

7 BY MR. JAUREGUI:

8 Q. And at some point did you become aware in
9 1995 at the time when this window blind was
10 manufactured whether or not there were alternative
11 designs that would have reduced or eliminated the
12 risk of strangulation of young children with loop
13 cords and chains?

14 MR. WILLIAMS: Objection. I don't
15 think that question made any sense. So,
16 vague and ambiguous.

17 THE WITNESS: I believe I detailed
18 in my report and I've talked about here
19 today the different options that were
20 being made available at that time.

21 BY MR. JAUREGUI:

22 Q. And one of those options was the vertical
23 blind with a wand; is that correct?

24 A. Yes.

25 Q. In your report you also talk about a

1 tensioning device, you make reference to such a
2 device. What is your understanding of what a
3 tensioning device is?

4 A. My understanding of a tensioning device is
5 a -- an implement that holds taught or provides
6 tension to the loop.

7 Q. And what is the purpose of using a
8 tensioning device?

9 A. To reduce the potential hazard of
10 strangulation.

11 Q. Did you know whether at time the vertical
12 blind at issue left the control of Hunter Douglas
13 it contained a tensioning device?

14 A. I do not know.

15 Q. If it didn't contain a tensioning device,
16 do you have an opinion as to whether or not Hunter
17 Douglas acted negligently in any way by not
18 including a tensioning device with the vertical
19 blind at issue?

20 MR. WILLIAMS: Objection. Vague.

21 I think you asked him about Hunter
22 Douglas' possession. It goes through a
23 retailer. And secondly, I don't know
24 whether you're asking whether optional
25 tensioning device is part of your question

1 or not. So vague and ambiguous.

2 THE WITNESS: Can you repeat your
3 question?

4 MR. JAUREGUI: Can you read back
5 that question, please?

6 -----

7 (The court reporter read back the
8 pending question.)

9 -----

10 THE WITNESS: I don't know that
11 that's going to be offering opinions as to
12 negligence or saying -- incorporating
13 negligence. But with respect to whether
14 or not a tensioning device was included
15 with this or was optional, I can -- the
16 actions of Hunter Douglas in offering this
17 I think still provides for a product that
18 can be used safely.

19 BY MR. JAUREGUI:

20 Q. Even if no tensioning device was shipped
21 with the vertical blind at the time it left Hunter
22 Douglas' control?

23 A. Based on -- based on factors of how the
24 product is being used and where it's being used,
25 yes.

1 Q. What information is your understanding
2 that Hunter Douglas had as to where the vertical
3 blind at issue was going to be installed? In what
4 part of the house?

5 MR. WILLIAMS: What time?

6 MR. JAUREGUI: The time when it was
7 purchased.

8 MR. WILLIAMS: By the Davises?

9 MR. JAUREGUI: Yes.

10 MR. WILLIAMS: From some other
11 entity? Objection. Vague.

12 THE WITNESS: I -- I don't know
13 of -- what information Hunter Douglas may
14 or may not have been -- had in their
15 possession as to the purchase decision of
16 any specific entity.

17 BY MR. JAUREGUI:

18 Q. So you have no information as to the
19 location and usage intended for this particular
20 blind; is that correct?

21 MR. WILLIAMS: Objection.
22 Misstates his testimony.

23 THE WITNESS: I don't have any
24 knowledge of Hunter Douglas' knowledge as
25 to the location that the subject blinds

1 would have been used in when originally
2 purchased by the original purchaser.

3 BY MR. JAUREGUI:

4 Q. All right. Mr. Jankoski did tell you that
5 it was his understanding that vertical blinds are
6 most of the use in sliding doors or other common
7 areas. Is that --

8 A. That they're often used and that
9 particular features of the product fit well for
10 that environment.

11 Q. All right. Let me ask you a question
12 about the publications that you list on your CV.
13 Can these publications be accessed online?

14 A. Many of them can.

15 Q. All right. Do you have copies of these
16 publications at your disposal?

17 A. Some of them I do.

18 Q. All right. Now, on two or three instances
19 I saw you were quoting yourself, unless there's a
20 different Sala that you quoted in your report.

21 A. Can you point me to that?

22 Q. If you take a look at Page 2. For
23 example, the last sentence in the first paragraph
24 starts with, "The results and evolving base of
25 knowledge..." You see that?

1 A. Yes.

2 Q. In parentheses you have, "Sala, et al,
3 2010." Is that you?

4 A. Yes, that is.

5 Q. What are you quoting there?

6 A. That would be the citation which is one,
7 two, three, four, fifth citation under
8 publications, Sala, Nichols, Muhammad, Lakhiani,
9 Rauschenberger, Lackianni and Wood.

10 Q. What page are you on? Seventeen? Did you
11 say page 17?

12 A. No. It's publications in my CV after the
13 list of materials. There you go.

14 Q. All right. What item is it. Oh, I see
15 it. Sala --

16 A. Nichols, Muhammad, Lakhiani,
17 Rauschenberger, Lackianni and Wood.

18 Q. And what is the title of that article?

19 A. Government Warnings Safety Information, A
20 Comparison Of Interagency Regulations and
21 Guidance.

22 Q. And what was your role in that -- was that
23 a study or just an article?

24 A. It was a review article.

25 Q. A review of the literature?

1 A. A review of literature. And as indicated
2 by the title of the guidance and regulations
3 offered by different agencies within the United
4 States government.

5 Q. What was the intended audience in that
6 publication?

7 A. Other warning scientists.

8 Q. Was that article peer reviewed?

9 A. It was. It was reviewed for inclusion in
10 a conference and also in a book.

11 Q. Is it going to be included in a book or
12 was it?

13 A. It already -- the book is out.

14 Q. And is the title of the book reflected
15 here?

16 A. Advances In Human Factors, Ergonomics And
17 Safety In Manufacturing And Service Industries.

18 Q. What was your role in this study?

19 A. I was an author of the article, or the
20 chapter.

21 Q. Can you be more specific? There were
22 three different authors.

23 A. No. There were a number of different
24 authors.

25 Q. A number of different authors. Was there

1 some specific task that you had in connection with
2 this article?

3 A. I compiled it, I wrote it. I requested
4 work from others. I incorporated other's work and
5 provided authorship to the article. The role of
6 the authors -- we worked on this together. It was
7 a collaborative effort.

8 Q. Seems to me you did all the work.

9 A. No. They all had a hand in the authorship
10 of the paper.

11 Q. All right. You included multiple
12 materials in the two binders that you have there.
13 I did not see a copy of this article in there, or
14 did we miss it?

15 A. No. No. That wasn't included in there.

16 Q. Can you provide your attorney with a copy
17 of that article?

18 A. Certainly.

19 Q. Any of the publications that you rely
20 upon, do any of them have to do specifically with
21 the issue of window covering safety?

22 A. Can you repeat that? I'm sorry.

23 Q. Yeah. In any of the publications that are
24 listed in the materials attached to your
25 Curriculum Vitae, are any of those publications

1 specifically related to the issue of window
2 covering safety excluding the reports from the
3 U.S. Consumer Product Safety Commission?

4 A. Yes. You asked about the ones on my CV or
5 the --

6 Q. The ones on your publications on your CV.
7 Yes.

8 A. No. None of them are.

9 Q. Have you ever published anything related
10 to the issue of safety as it relates to window
11 coverings?

12 A. I don't believe I have.

13 Q. Do you agree that the exposure of the
14 population to the risk of strangulation is a
15 vulnerable population, i.e. children from zero to
16 five years old? Would you consider that a
17 vulnerable population?

18 MR. WILLIAMS: Objection. Vague.

19 THE WITNESS: Can you rephrase the
20 question?

21 BY MR. JAUREGUI:

22 Q. Yes. Children that are zero to five years
23 old, do you consider that segment of the
24 population to be a vulnerable population when it
25 comes to the risk of injury by strangulation from

1 window covering cords?

2 MR. WILLIAMS: Objection. Vague as
3 to what you mean by vulnerable.

4 Go ahead.

5 THE WITNESS: Can you define what
6 you mean by vulnerable?

7 BY MR. JAUREGUI:

8 Q. A population not able to comprehend the
9 risk of injury.

10 A. The -- I would -- I would agree that the
11 ages you're referencing has a lesser understanding
12 of hazards in general and certainly as it relates
13 to window cord strangulation.

14 Q. At the time of his death Max was about
15 three years old. Do you have an opinion as to
16 whether or not Max was able to appreciate the risk
17 of strangulation from the vertical blind cords?

18 A. I -- I do not believe that Max would have
19 the developmental and cognitive capacity to fully
20 appreciate that hazard.

21 Q. So he would not have been able to
22 appreciate the risk or the hazard posed by the
23 window blind cords?

24 A. Specifically, as you were talking about
25 his interaction with them, I -- I doubt that he

1 would.

2 Q. So I take it you don't place any
3 contributory fault on the part of Max for his
4 death?

5 A. I would not offer any -- be offering any
6 opinions as to the actions of Max in this case.

7 Q. You are, however, offering an opinion
8 regarding the conduct in this case of the
9 installer and the purchaser of the vertical blind?

10 A. What do you mean by conduct?

11 Q. On Page 14, the third bullet point, you
12 indicate that both Miss Davis, who purchased the
13 blind and helped to install the blind at the home
14 of her daughter, Miss Roberts, they both
15 "...understood the potential hazard associated
16 cords attached to the window blinds." And then
17 you go on to note that, "Despite this
18 understanding, they failed to address this
19 condition." What do you mean by that statement,
20 the second statement, that "Despite this
21 understanding, they failed to address this
22 condition." What would you have expected them to
23 do?

24 A. This does not necessarily, as you're
25 stating it, lead to my expectations of their

1 behavior. Are you saying what I would expect them
2 to do? This is a statement of what they -- they
3 retained the product in their home in the state in
4 which it had -- they originally installed it. So
5 this is more of a statement of their knowledge of
6 the hazard and their continued use of the product
7 with it in that state and their comfort level in
8 their use of the product in that state.

9 MR. WILLIAMS: There's no opinion
10 so far.

11 THE WITNESS: There's no opinion in
12 there.

13 MR. JAUREGUI: There's no opinion
14 in there.

15 MR. WILLIAMS: Not in those first
16 two sentences.

17 BY MR. JAUREGUI:

18 Q. Move on to the third sentence. And I take
19 it that's the opinion there, that "There is no
20 scientific reason to believe that additional or
21 alternative warnings or safety information would
22 have altered their behavior with respect to the
23 selection, purchase, installation, and use of the
24 incident product."

25 A. Correct.

1 Q. All right. Did you review Miss Davis'
2 affidavit?

3 A. Yes.

4 Q. And do you disagree with what she states
5 in her affidavit?

6 MR. WILLIAMS: She states more than
7 one thing, so you have to be specific.

8 BY THE COURT:

9 Q. Do you have a copy of her affidavit?

10 A. I do not have it with me. If you provide
11 it to me, I'll be happy to review it again.

12 Q. Can you tell me what specific scientific
13 information you rely upon to reach the conclusion
14 that the behavior of Miss Davis or Miss Roberts
15 would not have been altered in this case?

16 A. The articles that we've referenced before
17 relating to behavior and scientific understanding
18 of behavior with regards to safety information,
19 that is the basis, the underlying basis for the
20 statement as to there's no scientific reason to
21 believe that additional or alternative warnings
22 or safety information would have altered their
23 behavior combined with the -- the facts and
24 evidence in the case.

25 Q. On Page 2 of her affidavit, Paragraph 7,

1 she states that, "Because the vertical blind was
2 going to be installed in a child's room, if I had
3 been given the option of a vertical blind without
4 cords, for safety reasons, I would have chosen to
5 purchase a vertical blind that could be operated
6 with a wand." Now, this statement contrasted to
7 what you state here, does that contradict the
8 opinions that you assert in this case?

9 MR. WILLIAMS: Does her
10 statement --

11 MR. JAUREGUI: Yes.

12 MR. WILLIAMS: -- contradict his
13 opinion?

14 MR. JAUREGUI: Yes.

15 MR. WILLIAMS: If you understand
16 that.

17 THE WITNESS: Might I read this?
18 Thank you. That statement does not change
19 my opinion in this matter.

20 BY MR. JAUREGUI:

21 Q. Why is that?

22 A. Because the deposition testimony is very
23 clear that Mrs. Davis and -- Mrs. Davis was
24 familiar with the product, that she was familiar
25 with the hazard, that she was comfortable with the

1 product, and, again, as we've covered in the --
2 the discussion over what scientific research shows
3 us is that one's perception post hoc of what one
4 would have done when faced with safety information
5 is often quite different than actual behavior.
6 She acted upon and based on a full knowledge of
7 the product she was ordering that she was
8 comfortable with, and I hold, as I stated, that
9 there is no scientific reason to believe that
10 additional or alternative information would have
11 changed her behavior.

12 Q. So all of the scientific studies, the
13 articles that we've reviewed, would nullify her
14 affidavit in this instance basically saying that
15 if she had been made aware there was an option of
16 a vertical blind with a wand, that for safety
17 reasons she would have chosen the vertical blind
18 with the wand. You're saying that in light of the
19 scientific evidence you reviewed for this case,
20 that statement doesn't hold any water here?

21 A. Can you --

22 MR. WILLIAMS: Objection. Vague
23 and ambiguous.

24 THE WITNESS: Can you read back the
25 question?

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(The court reporter read back the last question.)

MR. WILLIAMS: Objection. Vague.

Go ahead.

THE WITNESS: I -- the -- I -- I'm not suggesting that -- that the research be taken to nullify a statement made. I'm not disputing that she made that statement. However, based on the scientific understanding of people's assessment of their own behaviors in retrospect and when thinking about their behaviors and people's responses to safety information, I believe that based on her level of knowledge and sophistication with the product, that she is over-estimating her compliance with the available safety information.

BY MR. JAUREGUI:

Q. Okay. In your opinion does Miss Davis bear any fault for Max's death in this case?

MR. WILLIAMS: I'll object. That's outside the scope of the work that

1 Dr. Sala has been asked to perform in this
2 case. He hasn't been asked to assess
3 fault to the Robertses or Davises.

4 THE WITNESS: I would leave
5 determination of fault up to a jury for
6 whatever they would like to consider in
7 this case. I am rendering opinions as to
8 what the availability of safety
9 information and based on scientific
10 evidence and the evidence available in
11 this case what I would expect with respect
12 to their behavior. But that's not a
13 judgment of fault with respect to the
14 Davises or Robertses.

15 BY MR. JAUREGUI:

16 Q. What is the basis of the information that
17 you relied upon to make this same determination as
18 to Miss Roberts' conduct in this case?

19 A. She also -- there is -- there is an
20 acknowledgement of the hazard and her actions with
21 respect to the hazard and her comfort with the --
22 the product and how she used the product and how
23 she had the product in her house.

24 Q. Are you aware of any modifications that
25 were made to the blind after it left the control

1 of Hunter Douglas?

2 A. At what time frame?

3 Q. At any time after it left the control of
4 Hunter Douglas.

5 A. After the incident, I believe a piece of
6 the cord was cut.

7 Q. All right. So in between the that time it
8 left the control of Hunter Douglas and prior to
9 the date of this incident.

10 A. I'm not aware of any modifications to it.

11 Q. Do you know whether window blinds such as
12 the one at issue in this case are considered home
13 fixtures?

14 A. Home fixtures?

15 Q. Yes.

16 MR. WILLIAMS: Objection. Vague.

17 What do you mean by that?

18 THE WITNESS: I don't know if I've
19 heard them characterized in that way.

20 BY MR. JAUREGUI:

21 Q. Is it foreseeable for the purchaser or the
22 installer of this product -- strike that. You're
23 not commenting in your report, at least I didn't
24 see that, of what role, if any, the distributor or
25 the retailer of this product had in this incident;

1 correct?

2 A. I didn't include anything that refers to
3 that.

4 Q. Now, the Padillas have testified in this
5 case, both Mr. and Mrs. Padilla testified in this
6 case, that if they had seen any warnings attached
7 to the blind telling them about the danger of
8 strangulation of young children, that they would
9 have gotten rid of the blind. Yet you conclude in
10 your report essentially no amount of warnings
11 would have changed their behavior in this case, is
12 that fair?

13 A. There is no scientific reason to believe
14 that additional or alternative warnings or safety
15 information provided with the product would have
16 altered their behavior and averted this incident.

17 Q. All right. What is your understanding as
18 to the type of warnings that accompany the blind
19 in this case?

20 A. There is -- well, we don't know, I think,
21 what specifically accompanied the blind. There is
22 deposition testimony that warnings would have been
23 included with it. There's deposition testimony
24 from a Hunter Douglas representative saying that
25 they would have included warnings either on frame

1 rail on hang tags, and Miss Davis, I believe,
2 testifies as to being very familiar with the hang
3 tags believing that they all came with them or --
4 and also testifying that there was a warning
5 present on the -- the frame rail of the blinds.

6 Q. Assuming there was a hang tag that
7 accompanied this product at the time it left
8 Hunter Douglas' control, do you think that warning
9 would have been sufficient to alert the Padillas
10 about the danger of strangulation from the window
11 covering cords?

12 MR. WILLIAMS: Objection. Vague
13 and incomplete hypothetical.

14 THE WITNESS: Depending on the --
15 it's very difficult to talk about the
16 warning as you've phrased the question.

17 BY MR. JAUREGUI:

18 Q. I'll tell you what. Let's just withdraw
19 that question, leave it on the side for a moment,
20 and go back to the issue of warnings. Do you know
21 the text of the actual warning that you referenced
22 in your testimony earlier as to what specific type
23 of warning would have been included?

24 A. No. That -- to my knowledge, that has not
25 been -- that has not been produced in this case.

1 Q. Have you ever seen any documents relating
2 to or depicting the type of warning that would
3 have been included with this variable blind types?

4 A. For this specific blinds I'm not aware of
5 that information.

6 Q. You are aware, are you not, that the hang
7 tags that you discussed earlier were not meant to
8 be permanent?

9 A. I wouldn't disagree with that.

10 Q. If the hang tag was the only notice or
11 warning that would have accompanied this product
12 and somewhere along the line the hang tag is
13 removed by somebody other than the Padillas, how
14 are the Padillas supposed to know about the risk
15 of strangulation from window coverings?

16 A. I think that there is a number of
17 potential sources for that sort of knowledge
18 including the average programs from Consumer
19 Product Safety Commission, from the Window Cord
20 Covering -- or Window -- Window Covering
21 Manufacturing Association, the -- pediatricians,
22 hospitals, child safety texts or publications or
23 parenting publications, news, TV. There's been a
24 great deal of effort as documented to try and put
25 this information out for interested parties that

1 are seeking it.

2 Q. If the information is so readily available
3 as you make it out to be, then are the Padillas
4 uniquely situated that they just failed to read
5 that information or are they in the same situation
6 as the parents of the other 359 children that have
7 lost children through death from strangulation?

8 MR. WILLIAMS: Objection. It's
9 argumentative and it's an incomplete
10 hypothetical.

11 THE WITNESS: I think that you
12 can't mix the numbers you're talking about
13 and the Padillas. You're talking about
14 the Padillas being in 1995. And this
15 number of 300 that has been referenced
16 elsewhere would be over a time period that
17 includes time before 1995, before any of
18 those efforts that I've been discussing
19 even came about.

20 BY MR. JAUREGUI:

21 Q. So what are you saying here?

22 A. That --

23 Q. That the Padillas should have been exposed
24 to more information than the parents were -- than
25 the parents up in 1995 that would have been

1 exposed to that type of information?

2 A. I'm -- I was attempting to address the
3 question that you asked, which was relating
4 Padillas to this -- to the parents of the
5 hypothetical 300 children that you had referenced
6 beforehand.

7 Q. All right. Do you know if the Window
8 Covering Manufacturers Association or the Window
9 Covering Safety Council ever sent any information
10 to the Padilla household advising them of the risk
11 of strangulation?

12 A. I don't know of any direct communications
13 between WCMA and the Padillas.

14 Q. Is it -- do you know of when at the time
15 when children, their -- when parents take their
16 children to the pediatrician, whether the risk of
17 strangulation from window coverings is something
18 that is routinely discussed between pediatricians
19 and parents?

20 A. I don't have a -- I don't have the data as
21 to the frequency, but I know that it is a topic
22 that is included in information handed to parents
23 and is part of the safety information that
24 pediatricians share with parents.

25 Q. Do you know for a fact whether in this

1 case Max's pediatrician discussed the risk of
2 injury from cord strangulation with Max's parents?

3 A. I'm only privy to the information that's
4 been provided by the Padillas in that matter.

5 Q. And child safety texts, what are those
6 things?

7 A. There are a number of books and magazines
8 and articles that are geared towards expecting
9 parents that address issues of safety concerns of
10 a developing child.

11 Q. Do you know whether or not any of those
12 books or magazines are published in Spanish?

13 A. Yes.

14 Q. They are?

15 A. Yes, they are.

16 Q. Do you know whether any of those books or
17 magazines were sold in and around the area where
18 the Padillas resided?

19 A. I would say that yes.

20 Q. Did you understand that in this case the
21 police were summoned to the Padillas' residence
22 within the hour after the incident occurred?

23 A. I'd have to review the specific time
24 frames, but I have no reason to doubt that.

25 Q. I represent to you they were there within

1 the hour after this incident occurred. Were you
2 aware the police officer specifically noted in the
3 report that there were no types of warnings found
4 on the blind?

5 A. I could review that, but to -- I'll review
6 that to -- to --

7 Q. Okay. I represent to you that the police
8 report states that the vertical blind had no
9 warnings attached to it. If that is the case,
10 then other than reviewing all these various
11 publications or sources that you told me earlier,
12 is there any other way how you would expect the
13 Padillas to learn about the risk of strangulation
14 from the vertical blind at issue?

15 MR. WILLIAMS: Other than the
16 physical condition of the blinds
17 themselves? What he's testified to
18 already? It's an incomplete question.
19 It's vague.

20 Go ahead.

21 THE WITNESS: Well, the sources
22 that I testified to, the publications,
23 doctors, hospitals, also I think that to
24 many -- to some portion of the population,
25 inspection of the condition, inspection of

1 the blinds would identify that as a
2 potential hazard. Certainly this is
3 something that Mr. Padilla testifies to
4 during other situations, and to
5 acknowledging things that although he was
6 not provided any specific warning about,
7 recognizes on his own as being a safety
8 hazard and testifies to taking steps to
9 address. So there is a potential of
10 recognizing the loop formed by a hanging
11 cord as a safety hazard.

12 BY MR. JAUREGUI:

13 Q. In your report for this case did you take
14 into account as a factor the severity of the risk
15 posed to young children?

16 A. How so? Can you be more --

17 Q. Yes. Being severity meaning it could lead
18 to death.

19 A. When you say did I take into account --

20 Q. That the severity of the risk of
21 strangulation to young children from window blind
22 cords?

23 A. With respect to --

24 Q. To the opinions you have in this case?

25 A. To all the opinions.

1 Q. With respect to -- yes. All the opinions?

2 MR. WILLIAMS: Objection. I don't
3 understand the question. Vague.
4 Compound.

5 THE WITNESS: I believe that my
6 opinions take into account the fact that
7 the potential hazard has a severe
8 consequence.

9 BY MR. JAUREGUI:

10 Q. And did you take into account that the
11 vulnerability of the population, i.e., small
12 children?

13 A. I believe that I have incorporated the
14 idea of childhood and development into my
15 opinions.

16 Q. And in this case you do not place any
17 blame on Max for his death?

18 A. Again, I'm not going to be offering
19 opinions or characterization of Max's behaviors or
20 cognitions or actions in this matter.

21 Q. All right. Let me try this again. The
22 issue of open and obvious, do you have an opinion
23 as to whether or not the danger that was posed to
24 Max by vertical blind was open and obvious?

25 A. The -- the -- can you define open and

1 obvious for me?

2 Q. If you see a child that climbs on top of a
3 table, it is obvious to anyone seeing that child
4 that if that child falls off of the table, that
5 he's going to be become injured. So when I --

6 A. In that respect, then, yes. I think that
7 if anyone was to see a child with their head in a
8 window cord, that would be open and obvious to
9 that being a strangulation hazard, as you posed
10 open and obvious.

11 Q. All right. But you say that somebody is
12 supposed to see a child with their head inside the
13 loop. In this case the Padillas have never seen
14 Max attempt to look out of the window or playing
15 with the window blind cords.

16 A. True. But at the same time, the idea is
17 you're posing open and obvious of a child falling
18 off of a table. I don't think that I would
19 initially think of the table as a danger to
20 children. I would think if posed to me if a child
21 was standing on there and fell off, would it be
22 dangerous, the answer might be open and obvious as
23 opposed if a -- someone considered a child being
24 within that loop that is there and one can see,
25 then, yes, that is an open and obvious hazard as

1 it's being represented here today.

2 Q. So I take it, then, you are of the opinion
3 that the risk of strangulation to young children,
4 specifically in this case to Max from the loop
5 cord and loop chain, you would not agree it was a
6 hidden danger?

7 A. I think you're misrepresenting -- I'm not
8 using terminology hidden and open and obvious.
9 I'm trying to work in with how you're asking the
10 questions of me today. And the idea of a hidden
11 danger, if you're asking whether or not people
12 would have knowledge, we can address those --
13 those questions. And there's deposition testimony
14 from the Padillas that they never considered that
15 and they did not know of it. That is specific to
16 this instance.

17 Q. All right. So that's fine. So in light
18 of the fact that the Padillas were never aware of
19 the danger of strangulation from the window blind
20 cords, do you have an opinion as to whether or not
21 the danger posed to Max by this vertical blind was
22 a hidden danger?

23 A. I have no reason to dispute their
24 testimony that they did not know or did not
25 consider that as a hazard.

1 Q. Is the knowledge of the risk of
2 strangulation posed by loop cords -- let me start
3 again. Is the manufacturer's knowledge of risk of
4 strangulation by window covering cords relevant to
5 your analysis in this case?

6 MR. WILLIAMS: Objection. Vague,
7 incomplete hypothetical.

8 BY MR. JAUREGUI:

9 Q. Let me withdraw that question. The
10 knowledge that Hunter Douglas had about the risk
11 of strangulation to young children from loop cords
12 and loop chains, is that knowledge relevant to
13 your opinion in this case?

14 A. I think I've incorporated that into my
15 opinions. That's been part of my -- my report.

16 Q. Can you tell me where specifically?

17 A. Well, I've discussed that through various
18 portions of the report. And, for example, in
19 talking about the fact that in the time frame of
20 1995, Hunter Douglas' statements from the
21 deposition testimony said that they included
22 warnings as to child hazards. That's -- that's
23 acknowledgement of Hunter Douglas incorporated
24 that knowledge.

25 Q. All right. And I believe you used an

1 example to indicate that the Padillas' behavior in
2 this case indicated that they would have not
3 altered the behavior if there had been additional
4 warnings in this case and decided to -- the fact
5 in Max's room there was a TV set somewhere. Do
6 you recall that?

7 A. I recall the deposition testimony. Yes.

8 Q. So what is the relevance of the Padillas
9 allowing their son, in this case, to have a TV set
10 in the room?

11 A. That's not my point. That's -- I think
12 that as you've stated it, that's not the relevant
13 portion.

14 Q. So what's the relevant portion?

15 A. The relevant portion, and what I speak of
16 in my report and what I tried to explain, is that
17 Mr. Padilla testifies as to having a concern as to
18 his son's safety with respect to this TV being on
19 a counter and over his son, and that he would
20 routinely take care of it, he would say. And I
21 think that -- that his observation and attribution
22 of a safety hazard to that situation was well
23 founded. There's a rich history of television
24 falls from heights onto children resulting in
25 severe and deadly consequences. However, the

1 action of the continually pushing it back or
2 taking care of it in some manner did not -- was
3 not something that befit the ultimate end result.
4 Rather than removing it or placing it, putting it
5 somewhere where such an interaction couldn't
6 occur, or fixing it in some way so that it could
7 not tip over and fall, he would routinely take
8 care of. This is very similar to something like a
9 window blind and some hazard that might be posed
10 by a looped cord.

11 Q. So Mr. Padilla's handling of the TV in
12 Max's room, what does that tell you about
13 Mr. Padilla's knowledge of the window blind cord?

14 A. It is not informing me as to his knowledge
15 of window blind cords.

16 Q. Okay. Did you know how big the TV set
17 was?

18 A. No.

19 Q. Did you know how high it was?

20 A. It was over his head, he says.

21 Q. Okay. All right. Do you know where the
22 TV set was located on top of, what item?

23 A. I can look for the reference as to what
24 item it was. I defer to his deposition testimony.

25 Q. All right. I believe it was a chest. Do

1 you know how high that piece of furniture was?

2 A. Again, there's reference to over his head.

3 Q. Do you know whether Max had any means of
4 reaching to -- to the TV and pulling it over his
5 head?

6 A. Well, I think that there would be -- there
7 would be means for him to do that.

8 Q. Do you know if Max had any step ladders or
9 chairs or high chairs that would enable him to
10 climb and access the TV set?

11 A. There do appear to be a number of items in
12 that room that could be used to be stood upon to
13 reach heights.

14 Q. Are you speculating here that because
15 Mr. Padilla did either not secure the TV set or
16 remove it from the room, that that particular type
17 of conduct transfers to the risk of strangulation
18 from the window covering cord and it doesn't
19 matter how many warnings, labels, or the like,
20 would have been affixed to the product, that his
21 conduct would have been the same, in other words,
22 that he would not have done anything about the
23 risk of danger posed by the loop cord?

24 MR. WILLIAMS: Objection to the use
25 of the term speculating. He testified to

1 his opinion in this regard.

2 Go ahead and answer the question

3 THE WITNESS: I'm using -- using
4 the available deposition testimony as data
5 to inform my analysis of what to expect
6 from Mr. Padilla's behavior if presented
7 with the warning information. I'm using
8 this as one piece of data to -- in
9 evaluation and formation of this opinion
10 as a basis for this opinion. It reflects
11 to me Mr. Padilla's response to safety
12 concerns. It is one piece of that that is
13 coupled with behaviors of Mr. and
14 Mrs. Padilla in other respects to the
15 availability of safety information and
16 their seeking of that information.

17 BY MR. JAUREGUI:

18 Q. What behavior on the part of Mr. Padilla
19 do you have in mind here?

20 A. Well, there is -- there is information
21 that neither have consulted with any sort of
22 publication or sought information as to child
23 safety issues from these outside sources.

24 Q. Is Mr. and Mrs. Padilla different from the
25 rest of the American population when it comes to

1 seeking that information about safety issues?

2 A. In some respects they very well might be.
3 Depends on what populations we're talking about.

4 Q. They may very well might be. What do you
5 mean?

6 A. There are segments of the population that
7 when they are going to have children, will
8 actively seek the sort of safety information or
9 will engage in some form of assessment of the
10 hazards in the environment.

11 Q. Are you talking about college educated
12 folks?

13 A. I'm not --

14 MR. WILLIAMS: Is your question
15 only about college educated folks?

16 BY MR. JAUREGUI:

17 Q. Let me withdraw that. Does the level of
18 education have anything to do with the knowledge
19 of -- the consumer's knowledge about issues of
20 safety around the house?

21 A. I -- I don't have specific data to speak
22 to that. However, also, I wouldn't want to imply
23 that non-college educated people are not able to
24 seek information or to ask for safety information.
25 I don't want that to be on the record, either.

1 Q. It won't be on the record. With that
2 clarification, other than Mr. Padilla's behavior
3 as he dealt with the TV, is there any other
4 concrete example that you can tell me that
5 Mr. Padilla did or the manner in which he behaved
6 to support your conclusion, that no amount of
7 warnings would have been of assistance in this
8 case?

9 A. Again, I would just point to the lack of
10 safety information seeking behavior with respect
11 to the Padillas. And that does, in my opinion,
12 does transfer over to their information seeking in
13 the -- with respect to warnings on the product as
14 well.

15 MR. WILLIAMS: Can we take a break
16 sometime soon?

17 MR. JAUREGUI: I'm getting ready to
18 wrap it up.

19 MR. WILLIAMS: Just a five-minute
20 break and then we'll come back.

21 MR. WEISS: I'll call back in five
22 minutes.

23 MR. JAUREGUI: Okay.

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25 (Off the record at 4:30 p.m.)

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(On the record at 4:35 p.m.)

MR. JAUREGUI: All right. We're
back on the record. Ready?

BY MR. JAUREGUI:

Q. You told us in this case, in light of the
behaviors exhibited by Mr. And Mrs. Padilla, you
conclude that there's no scientific reason to
believe that additional or alternative warnings or
safety information provided with the product would
have altered their behavior and averted this
incident; correct? That's your opinion, that's
what it says on Bullet Point No. 4?

A. Yes. I wrote Bullet Point No. 4.

Q. All right. And you still stand by it?

A. Yes, I do.

Q. If indeed that is true that no amount of
warnings would have altered the outcome in this
case, doesn't that make a stronger case for Hunter
and Douglas to produce products such as vertical
blinds with a wand instead of continuing to use
loop holes and a loop chain?

A. I don't agree.

Q. Okay. Which part do you disagree with?

1 MR. WILLIAMS: You asked him
2 doesn't that mean, and he basically said
3 no.

4 MR. JAUREGUI: Okay. He's going to
5 explain that.

6 BY MR. JAUREGUI:

7 Q. You don't agree with that?

8 A. I do not agree with that.

9 Q. And why don't you agree with that
10 statement?

11 A. Because I don't think that you can take my
12 statement as to -- in this specific instance for
13 the failure of Mr. And Mrs. Padilla to engage in
14 the information-seeking behavior that would
15 result in a warning provided with the product to
16 have been seen and followed. I don't think that
17 can and the condition of the product as it stood
18 in this instance, I don't think that can be used
19 as evidence to suggest that only the wand is a
20 safe option. That's not what I have stated. I
21 have stated my opinions with regard to the options
22 and designs available at the time of the
23 institute -- at the time of the sale and purchase
24 of these blinds, and I stand by those opinions
25 that there are -- that these products with chains

1 and loops or the wand can be used in safe manners.

2 Q. So if I put in my question the option with
3 the wand and also the option of the tensioning
4 device, is that -- is that the extent of options,
5 alternative designs that were available in 1995?

6 A. My understanding based on deposition
7 testimony, those were the options provided with
8 this style of blinds.

9 Q. Do you have an opinion as to whether or
10 not the vertical blind in issue had been fitted
11 with a tensioning device at the time this incident
12 occurred, whether the outcome could have been
13 changed?

14 A. Again, I'm not offering -- I haven't been
15 asked to address and I haven't attempted to
16 address the causation issues in this case.

17 Q. I asked you earlier what information did
18 you have to make the opinion or to assert the
19 opinion that vertical blinds, is your
20 understanding from speaking with Mr. Jankoski and
21 from the research that you did on the internet,
22 that vertical blind are generally are installed in
23 areas where there are sliding doors or where there
24 are large doors. Is that -- am I paraphrasing you
25 correctly there?

1 A. They are often -- they're often installed
2 in that fashion or that application, and that
3 there are features that make them attractive for
4 that sort of an application.

5 Q. Okay. Did you know whether prior to 1995
6 Hunter Douglas had any knowledge the consumers
7 were installing the vertical blinds with loop
8 cords in children's bedrooms?

9 A. I would -- I don't want to speak for
10 anyone in the company as to what their specific
11 knowledge at the time was.

12 Q. Did you know whether or not prior to 1995
13 there was an indication that consumers were
14 installing the vertical blinds with loop holes and
15 loop chains in children's bedrooms?

16 A. I believe that the vertical blinds were
17 being installed in bedrooms.

18 Q. If I were to show you -- I just happened
19 to run into this last night, what is known as an
20 IDI, an In Depth Investigation Report, which was
21 produced by the defendants in this case, Bate
22 Stamp Padilla HD-2912.

23 A. Um-hum. This is --

24 MR. WILLIAMS: There's no question
25 pending.

1 BY MR. JAUREGUI:

2 Q. Is this one of the IDI reports that you
3 told me you had reviewed earlier?

4 A. I don't have the list or the complete case
5 numbers available to me, but it does look similar
6 to the ones I would have reviewed.

7 Q. This is an incident that occurred on
8 June 10th, 1991, if I'm reading that correct. You
9 see the date there on the left side there on the
10 left box?

11 A. Yes.

12 Q. All right. And if you go to Page 2913,
13 description of the accident, it indicates that the
14 incident occurred in the victim's room; right?

15 A. Um-hum.

16 Q. All right. Is that a yes?

17 A. Yes.

18 Q. All right. So does this indicate at least
19 as early as 1991 consumers were installing
20 vertical blinds in their children's rooms?

21 MR. WILLIAMS: If things are
22 reported factually correctly here?

23 MR. JAUREGUI: Yes.

24 THE WITNESS: Yes. That's what I
25 testified to, that I have no doubt that

1 vertical blinds were being installed in
2 bedrooms.

3 BY MR. JAUREGUI:

4 Q. All right. Does this report in any way
5 contradict the conversations that you had with
6 Mr. Jankoski as to his understanding of what is
7 the most prevalent use of vertical blinds, use and
8 application of vertical blinds?

9 A. It does not contradict my discussion or
10 conversation or the information gained during my
11 conversation with Mr. Jankoski. And I'd just like
12 to again reiterate that you're saying most
13 prevalent. That was not how I characterized our
14 conversation or what we discussed. I am not
15 trying to say, and I said this before, that they
16 are never used in other applications, rather, that
17 they are often used for tall or long window banks
18 and have features that make them desirable for
19 those applications and applications specifically
20 like patio doors and sliding doors.

21 Q. Thank you. And in your report I believe
22 you go on to note these are common areas where the
23 children can be supervised all the time.

24 A. No. That is not what I say in my report.

25 Q. What is it that you say in your report

1 with regards to common areas?

2 A. I state that it would be reasonable to
3 expect that they'd be installed in common areas in
4 the home.

5 Q. And why is that reasonable expectation
6 relevant to your report in this case, if it is?

7 A. Because for those applications, you would
8 expect a different set of interactions, different
9 set of exposures and a different set of
10 supervision in those situations.

11 Q. And how are the interactions with the
12 product different when the product is installed in
13 that child's bedroom?

14 A. Well, if it's installed in a child's
15 bedroom, then there's -- part and parcel to that
16 is there would be a child around it. Also, in
17 bedrooms, in children's bedrooms oftentimes those
18 are areas where people would -- would institute
19 more control over the environment and rely less on
20 supervision to control accidental injuries. Also,
21 there's a whole range of different sorts of
22 furniture and devices that would be placed in
23 that -- that room. All those would factor into
24 what might be an appropriate choice for a window
25 covering in that room.

1 Q. Are you aware of the -- any re-calls of
2 window covering from the Consumer Product Safety
3 Commission?

4 A. I'm sorry?

5 MR. WILLIAMS: Any what?

6 BY MR. JAUREGUI:

7 Q. Any window covering re-calls from the
8 Consumer Product Safety Commission?

9 A. Are you referencing the re-call to repair?

10 Q. No. Generally, are you aware of any
11 window covering products being re-called by the
12 Consumer Product Safety Commission in the last
13 five years?

14 A. Yes.

15 Q. And do you have an understanding as to the
16 reason why these products have been re-called?

17 A. Well, I haven't reviewed it. In
18 preparation for this deposition, one I'm thinking
19 of most recently would be Roman shades.

20 Q. Do you know what was the mechanism of
21 injury or the reason why those Roman shades were
22 re-called?

23 A. Again, I'd rather not try to characterize
24 it here having not reviewed it specifically for
25 this deposition.

1 Q. Would those re-calls or the reason why
2 those re-calls were effectuated relevant to your
3 decisions in this case?

4 A. I did not incorporate --

5 MR. WILLIAMS: His opinions in this
6 case?

7 BY MR. JAUREGUI:

8 Q. Your opinions in this case. Thank you.

9 A. Again, I didn't review that information in
10 reference to this case.

11 MR. JAUREGUI: Just give me one
12 minute.

13 -----

14 (Off the record at 4:48 a.m.)

15 -----

16 (On the record at 4:52 p.m.)

17 -----

18 BY MR. JAUREGUI:

19 Q. All right. Do you intend to offer any
20 opinions in this case as to the relative costs of
21 a vertical blind with a loop cord and a chain such
22 as the one involved in the incident compared to
23 the price of a vertical blind fitted with a wand?
24 And we're talking about the time period of 1995.

25 A. No, I do not.

1 Q. When did you -- when did you first become
2 aware of the risk of strangulation for window
3 blind coverings?

4 A. I can't remember a specific time frame for
5 when -- when I became aware of that potential
6 hazard.

7 Q. Was that before you got hired by Exponent?

8 A. Yes.

9 Q. You look younger than Jeff, so I will ask
10 you this question. Do you have young children?

11 A. Yes, I do.

12 Q. Do you have any window coverings at home?

13 A. Yes, I do.

14 Q. What type of window coverings do you have
15 at home?

16 A. A variety of window coverings.

17 Q. Do you have any covers with loop holes?

18 A. Yes, I do.

19 Q. Have you made any modifications to those
20 loops cords as a result of what you may know about
21 the risk of strangulation from window cords with
22 regard to children?

23 A. No, I have not.

24 Q. And what ages are your children?

25 A. They are five, three and fourteen months.

1 Q. All right, Doctor. Have we gone over your
2 report in this case? Are these the -- all of the
3 opinions that you intend to offer in this case are
4 included in your report; is that correct?

5 A. Except as to response to questions asked
6 of me and to rebut any opinions that might appear
7 from Plaintiff's experts as they are being
8 proposed through ongoing discovery testimony.

9 Q. All right. I did not ask you one other
10 question. How much have you billed Mr. Williams
11 for the time you have expended on this case?

12 A. I am not currently aware of the total
13 amount.

14 Q. What's the last invoice that you saw in
15 this case?

16 A. I believe that there is only one invoice
17 in this case, and I have not reviewed it, and I
18 don't believe that's been sent out yet.

19 Q. Do you have any idea of the amount of
20 hours that you have spent on this case including
21 your time today in this deposition?

22 A. I'd be guessing at the number of hours.

23 Q. Give me an educated guess.

24 MR. WILLIAMS: Give him an educated
25 estimate.

1 THE WITNESS: I would say I have
2 probably spent probably between 30 and 40
3 hours.

4 MR. JAUREGUI: All right. Thank
5 you much for your time, and I'm done.

6 All right, Mike. It's your turn.

7 MR. WEISS: I have no questions.
8 Thank you.

9 MR. WILLIAMS: I do want a copy,
10 please, index, and e-tran.

11 MR. JAUREGUI: I'd like a regular
12 and condensed, index, DVD or CD copy,
13 electronic.

14 MR. WILLIAMS: We have plenty of
15 time, so we will read and sign. Why don't
16 you send it to me and I will forward it to
17 him.

18 -----

19 (Deposition concluded at 5:00 p.m.)

20 -----

21

22

23

24

25

1 STATE OF _____)
2 COUNTY OF _____) ss:

3
4
5
6 I, the undersigned, declare under penalty
7 perjury that I have read the foregoing transcript
8 and I have made any corrections, additions or
9 deletions that I was desirous of making; that the
10 foregoing is a true and correct transcript of
11 testimony contained therein.

12 EXECUTED this _____ day of _____,
13 _____, at _____, _____.
14 (City) (State)

15
16
17
18 _____
19 Joseph B. Sala, Ph.D.
20
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22
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24
25

REPORTER'S CERTIFICATE

I, Bonnie Smith, RPR No. 1627, Registered
Professional Reporter, certify:

That the foregoing proceedings were taken before
me at the time and place therein set forth, at which
time the witness was put under oath by me;

That the testimony of the witness, the questions
propounded, and all objections and statements made at
the time of the examination were recorded
stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties, nor
financially interested in the action.

I declare under penalty of perjury under the
laws of Pennsylvania that the foregoing is true and
correct.

Dated this 5th day of August, 2011.

BONNIE SMITH, RPR No. 1627

(Signature requested)